



# Federal Register

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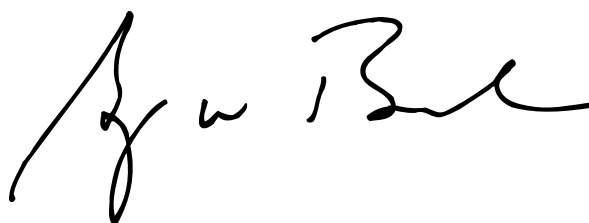
The President

## Continuation of the National Emergency Blocking Property of Persons Undermining Democratic Processes or Institutions in Zimbabwe

On March 6, 2003, by Executive Order 13288, I declared a national emergency blocking the property of persons undermining democratic processes or institutions in Zimbabwe, pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706). I took this action to deal with the unusual and extraordinary threat to the foreign policy of the United States constituted by the actions and policies of certain members of the Government of Zimbabwe and other persons to undermine Zimbabwe's democratic processes or institutions, thus contributing to the deliberate breakdown in the rule of law in Zimbabwe, to politically motivated violence and intimidation in that country, and to political and economic instability in the southern African region.

Because the actions and policies of these persons continue to pose an unusual and extraordinary threat to the foreign policy of the United States, the national emergency declared on March 6, 2003, and the measures adopted on that date to deal with that emergency must continue in effect beyond March 6, 2004. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency blocking the property of persons undermining democratic processes or institutions in Zimbabwe.

This notice shall be published in the **Federal Register** and transmitted to the Congress.



THE WHITE HOUSE,  
*March 2, 2004.*



# Rules and Regulations

Federal Register

Vol. 69, No. 44

Friday, March 5, 2004

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Parts 21 and 29

[Docket No. SW0010; Special Condition No. 29-0010-SC]

#### Special Condition: Agusta S.p.A. Model AB139 Helicopters, High Intensity Radiated Fields

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final special condition; request for comments.

**SUMMARY:** This special condition is issued for the Agusta S.p.A. Model AB139 helicopter. This helicopter will have novel or unusual design features associated with installing electrical and electronic systems that perform critical functions. The applicable airworthiness regulations do not contain adequate or appropriate safety standards to protect systems that perform critical control functions, or provide critical displays, from the effects of high-intensity radiated fields (HIRF). This special condition contains the additional safety standards that the Administrator considers necessary to ensure that critical functions of systems will be maintained when exposed to HIRF.

**DATES:** The effective date of this special condition is February 19, 2004. Comments must be received on or before May 4, 2004.

**ADDRESSES:** Send comments on this special condition in duplicate to: Federal Aviation Administration, Office of the Regional Counsel, Attention: Docket No. SW0010, Fort Worth, Texas 76193-0007, or deliver them in duplicate to the Office of the Regional Counsel at 2601 Meacham Blvd., Fort Worth, Texas 76137. Comments must be marked: Docket No. SW0010. You may inspect comments in the Docket that is maintained in Room 448 in the

Rotorcraft Directorate offices at 2601 Meacham Blvd., Fort Worth, Texas, on weekdays, except Federal holidays, between 8:30 a.m. and 4 p.m.

**FOR FURTHER INFORMATION CONTACT:** Jorge Castillo, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards, 2601 Meacham Blvd., Fort Worth, Texas 76193-0110; telephone (817) 222-5127, FAX (817) 222-5961.

**SUPPLEMENTARY INFORMATION:** We have determined that notice and opportunity for prior public comment are unnecessary since the substance of this special condition has been subject to the public comment process in several prior instances with no substantive comments received. Therefore, we determined that good cause exists for making this special condition effective upon issuance.

#### Comments Invited

You are invited to submit written data, views, or arguments. Your communications should include the regulatory docket or special condition number and be sent in duplicate to the address stated above. We will consider all communications received on or before the closing date and may change the special condition in light of the comments received. Interested persons may examine the Docket. We will file a report summarizing each substantive public contact with FAA personnel concerning this special condition in the docket. If you wish us to acknowledge receipt of your comments, you must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. SW0010." We will date stamp the postcard and mail it to you.

#### Background

On January 18, 2000, Agusta S.p.A. submitted an application for type validation of the Model AB139 helicopter through the Italian civil aviation authority—Ente Nazionale per L'Aviazione Civile (ENAC). The Model AB139 helicopter is a Part 29 transport category A, twin-engine conventional helicopter designed for civil operation. The fuselage structure will be manufactured principally of aluminum alloy with a secondary structure manufactured partly of composite materials. The helicopter will be capable of carrying 15 passengers with 2 crewmembers, and will have a maximum gross weight of

approximately 13,100 pounds. Two Pratt and Whitney PT6C-67C gas turbine engines will power the helicopter. The major design features include a 5-blade, fully articulated main rotor, a 4-blade anti-torque tail rotor, a retractable tricycle landing gear, visual flight rule (VFR) basic avionics configuration with a three-axis automatic flight control system (AFCS), and dual pilot instrument flight rule (IFR) avionics configurations.

#### Type Certification Basis

Under the provisions of 14 CFR 21.17, Agusta S.p.A. must show that the Model AB139 helicopter meets the applicable provisions of the regulations as listed below:

- 14 CFR 21.29;
- 14 CFR part 29, Amendment 29-1 through Amendment 29-42, with the following exceptions:
  - 14 CFR 29.602 at Amendment 29-45; and
  - 14 CFR 29.25 and 29.865 at Amendment 29-43;
- 14 CFR part 29, Appendix B, Amendment 29-40;
- 14 CFR part 36, Appendix H, Amendment 36-1 through the latest amendment in effect at the time that the noise tests are conducted; and
- Any special conditions, exemptions, and equivalent safety findings deemed necessary.

In addition, the certification basis includes certain special conditions and equivalent safety findings that are not relevant to this special condition.

If the Administrator finds that the applicable airworthiness regulations do not contain adequate or appropriate safety standards for these helicopters because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, Agusta S.p.A. Model AB139 helicopters must comply with the noise certification requirements of 14 CFR part 36; and the FAA must issue a finding of regulatory adequacy pursuant to § 611 of Public Law 92-574, the "Noise Control Act of 1972."

Special conditions, as appropriate, are defined in § 11.19, and issued by following the procedures in § 11.38, and become part of the type certification basis in accordance with § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

#### **Novel or Unusual Design Features**

The Agusta S.p.A. Model AB139 helicopter will incorporate the following novel or unusual design features: Electrical, electronic, or combination of electrical electronic (electrical/electronic) systems that perform critical control functions or provide critical displays, such as electronic flight instruments that will be providing displays critical to the continued safe flight and landing of the helicopter during operation in Instrument Meteorological Conditions (IMC), and Full Authority Digital Engine Control (FADEC) that will be performing engine control functions that are critical to the continued safe flight and landing of the helicopter during VFR and IFR operations.

#### **Discussion**

The Agusta S.p.A. Model AB139 helicopter, at the time of application, was identified as incorporating one and possibly more electrical/electronic systems, such as electronic flight instruments and FADEC. After the design is finalized, Agusta S.p.A. will provide the FAA with a preliminary hazard analysis that will identify any other critical functions, required for safe flight and landing, that are performed by the electrical/electronic systems.

Recent advances in technology have led to the application in aircraft designs of advanced electrical/electronic systems that perform critical control functions or provide critical displays. These advanced systems respond to the transient effects of induced electrical current and voltage caused by HIRF incident on the external surface of the helicopter. These induced transient currents and voltages can degrade the performance of the electrical/electronic systems by damaging the components or by upsetting the systems' functions.

Furthermore, the electromagnetic environment has undergone a transformation not envisioned by the current application of § 29.1309(a). Higher energy levels radiate from operational transmitters currently used for radar, radio, and television. Also, the number of transmitters has increased significantly.

Existing aircraft certification requirements are inappropriate in view

of these technological advances. In addition, the FAA has received reports of some significant safety incidents and accidents involving military aircraft equipped with advanced electrical/electronic systems when they were exposed to electromagnetic radiation.

The combined effects of the technological advances in helicopter design and the changing environment have resulted in an increased level of vulnerability of the electrical/electronic systems required for the continued safe flight and landing of the helicopter. Effective measures to protect these helicopters against the adverse effects of exposure to HIRF will be provided by the design and installation of these systems. The following primary factors contributed to the current conditions: (1) Increased use of sensitive electronics that perform critical functions; (2) reduced electromagnetic shielding afforded helicopter systems by advanced technology airframe materials; (3) adverse service experience of military aircraft using these technologies; and (4) an increase in the number and power of radio frequency emitters and the expected increase in the future.

We recognize the need for aircraft certification standards to keep pace with the developments in technology and environment, and in 1986 we initiated a high-priority program to: (1) Determine and define electromagnetic energy levels; (2) develop and describe guidance material for design, test, and analysis; and (3) prescribe and promulgate regulatory standards.

We participated with industry and airworthiness authorities of other countries to develop internationally recognized standards for certification.

The FAA and airworthiness authorities of other countries have identified two levels of the HIRF environment that a helicopter could be exposed to—one environment for VFR operations and a different environment for IFR operations. While the HIRF rulemaking requirements are being finalized, we are adopting a special condition for the certification of aircraft that employ electrical/electronic systems that perform critical control functions, or provide critical displays. The accepted maximum energy levels that civilian helicopter system installations must withstand for safe operation are based on surveys and analysis of existing radio frequency emitters. This special condition will require the helicopters' electrical/electronic systems and associated wiring to be protected from these energy levels. These external threat levels are

believed to represent the exposure for a helicopter operating under VFR or IFR.

Compliance with HIRF requirements will be demonstrated by tests, analysis, models' similarity with existing systems, or a combination of these methods. Service experience alone will not be acceptable since such experience in normal flight operations may not include an exposure to HIRF. Reliance on a system with similar design features for redundancy as a means of protection against the effects of external HIRF is generally insufficient because all elements of a redundant system are likely to be concurrently exposed to the radiated fields.

This special condition will require aircraft installed systems that perform critical control functions or provide critical displays to meet certain standards based on either a defined HIRF environment or a fixed value using laboratory tests. Control system failures and malfunctions can more directly and abruptly contribute to a catastrophic event than display system failures and malfunctions. Therefore, it is considered appropriate to require more rigorous HIRF verification methods for critical control systems than for critical display systems.

The applicant may demonstrate that the operation and operational capabilities of the installed electrical/electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the defined HIRF test environment. We have determined that the test environment defined in Table 1 is acceptable for critical control functions in helicopters. The test environment defined in Table 2 is acceptable for critical display systems in helicopters.

The applicant may also demonstrate, by a laboratory test, that the electrical/electronic systems that perform critical control functions or provide critical displays can withstand a peak electromagnetic field strength in a frequency range of 10 KHz to 18 GHz. If a laboratory test is used to show compliance with the defined HIRF environment, no credit will be given for signal attenuation due to installation. A level of 100 volts per meter (v/m) is appropriate for critical display systems. A level of 200 v/m is appropriate for critical control functions. Laboratory test levels are defined according to RTCA/DO-160D Section 20 Category W (100 v/m and 150 mA) and Category Y (200 v/m and 300 mA). As defined in DO-160D Section 20, the test levels are defined as the peak of the root means squared (rms) envelope. As a minimum, the modulations required for RTCA/DO-160D Section 20 Categories W and

Y will be used. Other modulations should be selected as the signal most likely to disrupt the operation of the system under test, based on its design characteristics. For example, flight control systems may be susceptible to 3 Hz square wave modulation while the video signals for electronic display systems may be susceptible to 400 Hz sinusoidal modulation. If the worst-case modulation is unknown or cannot be determined, default modulations may be used. Suggested default values are a 1 KHz sine wave with 80 percent depth of modulation in the frequency range from 10 KHz to 400 MHz, and 1 KHz square wave with greater than 90 percent depth of modulation from 400 MHz to 18 GHz. For frequencies where the unmodulated signal would cause deviations from normal operation, several different modulating signals with various waveforms and frequencies should be applied.

Applicants must perform a preliminary hazard analysis to identify electrical/electronic systems that perform critical functions. The term "critical" means those functions whose failure would contribute to or cause an unsafe condition that would prevent the continued safe flight and landing of the helicopter. The systems identified by the hazard analysis as performing critical functions are required to have HIRF protection. A system may perform both critical and non-critical functions. Primary electronic flight display systems and their associated components perform critical functions such as attitude, altitude, and airspeed indications. HIRF requirements would apply only to the systems that perform critical functions, including control and display.

Acceptable system performance would be attained by demonstrating that the critical function components of the system under consideration continue to perform their intended function during and after exposure to required electromagnetic fields. Deviations from system specifications may be acceptable, but must be independently assessed by the FAA on a case-by-case basis.

TABLE 1.—ROTORCRAFT CRITICAL CONTROL FUNCTIONS FIELD STRENGTH VOLTS/METER

Frequency	Peak	Average
10 kHz–100 kHz .....	150	150
100 kHz–500 kHz .....	200	200
500 kHz–2 MHz .....	200	200
2 MHz–30 MHz .....	200	200
30 MHz–70 MHz .....	200	200
70 MHz–100 MHz .....	200	200

TABLE 1.—ROTORCRAFT CRITICAL CONTROL FUNCTIONS FIELD STRENGTH VOLTS/METER—Continued

Frequency	Peak	Average
100 MHz–200 MHz ...	200	200
200 MHz–400 MHz ...	200	200
400 MHz–700 MHz ...	730	200
700 MHz–1 GHz .....	1400	240
1 GHz–2 GHz .....	5000	250
2 GHz–4 GHz .....	6000	490
4 GHz–6 GHz .....	7200	400
6 GHz–8 GHz .....	1100	170
8 GHz–12 GHz .....	5000	330
12 GHz–18 GHz .....	2000	330
18 GHz–40 GHz .....	1000	420

TABLE 2.—ROTORCRAFT CRITICAL CONTROL FUNCTIONS FIELD STRENGTH VOLTS/METER

Frequency	Peak	Average
10 kHz–100 kHz .....	50	50
100 kHz–500 kHz .....	50	50
500 kHz–2 MHz .....	50	50
2 MHz–30 MHz .....	100	100
30 MHz–70 MHz .....	50	50
70 MHz–100 MHz .....	50	50
100 MHz–200 MHz ...	100	100
200 MHz–400 MHz ...	100	100
400 MHz–700 MHz ...	700	50
700 MHz–1 GHz .....	700	100
1 GHz–2 GHz .....	2000	200
2 GHz–4 GHz .....	3000	200
4 GHz–6 GHz .....	3000	200
6 GHz–8 GHz .....	1000	200
8 GHz–12 GHz .....	3000	300
12 GHz–18 GHz .....	2000	200
18 GHz–40 GHz .....	600	200

### Applicability

As previously discussed, this special condition is applicable to the Agusta S.p.A. Model AB139 helicopter. Should Agusta S.p.A. apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special condition would apply to that model as well under the provisions of § 21.101(a)(1).

### Conclusion

This action affects only certain novel or unusual design features on one model series of helicopters. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the helicopter.

The substance of this special condition has been subjected to the notice and comment period previously and is written without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change

from the substance contained in this special condition. For this reason, we have determined that prior public notice and comment are unnecessary, and good cause exists for adopting this special condition upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

### List of Subjects in 14 CFR Parts 21 and 29

Aircraft, Air transportation, Aviation safety, Rotorcraft, Safety.

The authority citation for these special conditions is as follows: 42 U.S.C. 7572; 49 U.S.C. 106(g), 40105, 40113, 44701–44702, 44704, 44709, 44711, 44713, 44715, 45303.

### The Special Condition

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special condition is issued as part of the type certification basis for Agusta S.p.A. Model AB139 helicopters.

### Protection for Electrical and Electronic Systems from High Intensity Radiated Fields

Each system that performs critical functions must be designed and installed to ensure that the operation and operational capabilities of these critical functions are not adversely affected when the helicopter is exposed to high intensity radiated fields external to the helicopter.

Issued in Fort Worth, Texas, on February 19, 2004.

**David Downey,**

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 04–5028 Filed 3–4–04; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 2001–NM–301–AD; Amendment 39–13498; AD 2004–05–04]

RIN 2120–AA64

### Airworthiness Directives; Airbus Model A319 and A320 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD),

applicable to certain Airbus Model A319 and A320 series airplanes, that requires an inspection of the clearance space between the fuel quantity indication (FQI) probes located in the center fuel tank and the adjacent structure, an inspection of the position of the support bracket for each probe, an inspection of the part number for each support bracket, and corrective action if necessary. The actions specified by this AD are intended to prevent the loss of FQI of the center fuel tank, and electrical arcing between the FQI probes and the adjacent structure in the event that the airplane is struck by lightning. Such arcing could create a potential ignition source within the center fuel tank and an increased risk of a fuel tank explosion and fire. This action is intended to address the identified unsafe condition.

**DATES:** Effective April 9, 2004.

The incorporation by reference of a certain publication listed in the regulations is approved by the Director of the Federal Register as of April 9, 2004.

**ADDRESSES:** The service information referenced in this AD may be obtained from Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Dan Rodina, Aerospace Engineer, International Branch, ANM-116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2125; fax (425) 227-1149.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A319 and A320 series airplanes was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on December 3, 2003 (68 FR 67622). That action proposed to require an inspection of the clearance space between the fuel quantity indication probes located in the center fuel tank and the adjacent structure, an inspection of the position of the support bracket for each probe, an inspection of the part number for each support bracket, and corrective action if necessary.

## Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the supplemental NPRM or the FAA's determination of the cost to the public.

## Conclusion

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed in the supplemental NPRM.

## Cost Impact

There are approximately 25 airplanes of U.S. registry that will be affected by this AD. It will take approximately 1 work hour per airplane to accomplish the required inspection, at an average labor rate of \$65 per work hour. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be \$1,625, or \$65 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

## Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules

Docket at the location provided under the caption **ADDRESSES**.

## List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

## Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

**2004-05-04 Airbus:** Amendment 39-13498. Docket 2001-NM-301-AD.

*Applicability:* Model A319 and A320 series airplanes, as listed in Airbus Service Bulletin A320-28A1096, Revision 03, dated August 27, 2002; certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent the loss of fuel quantity indication (FQI) of the center fuel tank, and to reduce the potential for an ignition source and possible explosion within the center fuel tank due to electrical arcing between the FQI probes and the adjacent structure in the event that the airplane is struck by lightning, accomplish the following:

### Inspection

(a) Within 4,000 flight hours after the effective date of this AD, perform the actions specified in paragraphs (a)(1) and (a)(2) of this AD per the Accomplishment Instructions of Airbus Service Bulletin A320-28A1096, Revision 03, dated August 27, 2002. Although this service bulletin specifies to submit certain information to the manufacturer, this AD does not include such a requirement.

(1) Perform a one-time detailed inspection for proper clearance space between each FQI probe located in the center fuel tank and the adjacent structure; and a one-time detailed inspection of the position of the support bracket for each probe.

**Note 1:** For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(2) Inspect the support bracket for each probe to determine the part number of the support bracket.

#### Corrective Action

(b) During the inspections required by paragraph (a) of this AD, if the clearance between any FQI probe and the adjacent structure is determined to be less than 6.00 millimeters (0.236 inch), or if the position or part number of any probe support bracket is not correct, before further flight, remove and re-install the probe and its support bracket in the correct position, per Airbus Service Bulletin A320-28A1096, Revision 03, dated August 27, 2002.

#### Inspections Accomplished Per Previous Issue of Service Bulletin

(c) Inspections and corrective actions accomplished before the effective date of this AD per Airbus Service Bulletin A320-28A1096, dated March 23, 2001; Revision 01, dated July 4, 2001; or Revision 02, dated October 16, 2001; are considered acceptable for compliance with the corresponding action specified in this AD.

#### Alternative Methods of Compliance

(d) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM-116, Transport Airplane Directorate, FAA, is authorized to approve alternative methods of compliance for this AD.

#### Incorporation by Reference

(e) Unless otherwise specified in this AD, the actions shall be done in accordance with Airbus Service Bulletin A320-28A1096, Revision 03, excluding Appendix 01, dated August 27, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Note 2:** The subject of this AD is addressed in French airworthiness directive 2001-271(B), dated June 27, 2001.

#### Effective Date

(f) This amendment becomes effective on April 9, 2004.

Issued in Renton, Washington, on February 20, 2004.

**Kalene C. Yanamura,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 04-4564 Filed 3-4-04; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 2002-NM-113-AD; Amendment 39-13499; AD 2004-05-05]

**RIN 2120-AA64**

**Airworthiness Directives; Airbus Model A300 B2-1C, B2-203, B2K-3C, B4-2C, B4-103, and B4-203 Series Airplanes; Model A300 B4-600, B4-600R, and F4-600R (Collectively Called A300-600) Series Airplanes; and Model A310 Series Airplanes**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment supersedes an existing airworthiness directive (AD), applicable to all Airbus Model A300 B2-1C, B2-203, B2K-3C, B4-2C, B4-103, and B4-203 series airplanes, that currently requires a one-time inspection of the space between the fuel quantity indication (FQI) probes and any adjacent structures for minimum clearance, and corrective action if necessary. This amendment expands the applicability in the existing AD and requires the subject one-time inspection on additional airplanes. The actions specified by this AD are intended to prevent the possibility of electrical arcing to the fuel tank if the airplane should be struck by lightning. Such arcing could create a potential ignition source within the fuel tank and an increased risk of a fuel tank explosion and fire. This action is intended to address the identified unsafe condition.

**DATES:** Effective April 9, 2004.

The incorporation by reference of certain publications, as listed in the regulations, is approved by the Director of the Federal Register as of April 9, 2004.

The incorporation by reference of a certain other publication, as listed in the regulations, was approved previously by the Director of the Federal Register as of August 1, 2001 (66 FR 34088, June 27, 2001).

**ADDRESSES:** The service information referenced in this AD may be obtained from Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Dan Rodina, Aerospace Engineer, International Branch, ANM-116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2125; fax (425) 227-1149.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 2001-13-09, amendment 39-12289 (66 FR 34088, June 27, 2001), which is applicable to all Airbus Model A300 B2-1C, B2-203, B2K-3C, B4-2C, B4-103, and B4-203 series airplanes, was published in the **Federal Register** on October 2, 2003 (68 FR 56799). The action proposed to require a one-time inspection of the space between the fuel quantity indication (FQI) probes and any adjacent structures for minimum clearance, and corrective action if necessary.

#### Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

#### Request for an Alternative Method of Compliance (AMOC)

One commenter states that in 1999 it began replacing the factory-installed fuel quantity indicating system (FQIS) on its A300-600 series airplanes with a Goodrich system, certified by Supplemental Type Certificate (STC) 00092BO. In addition, the commenter states that, as of January 2001, all its airplanes were modified per the Goodrich STC, which, due to increased clearance by an improved design, provides a greater level of safety than the factory-installed system. The commenter asks that the FQIS that is installed per the Goodrich STC be included as a second method of compliance, or that the proposed AD be revised to include credit for the airplanes already modified.

The FAA cannot agree to other methods of compliance since no supporting data that such installation would provide an acceptable level of safety were provided to us to substantiate the commenter's request. For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not need or be able to accomplish the requirements of the proposed AD. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance in accordance with paragraph (d)(1) of this

AD. The request should include a description of changes to the design that will ensure the continued airworthiness of the affected airplanes in lieu of the required inspections. No change to the final rule is necessary in this regard.

A second commenter states that it is the STC holder for the FQI probes that replace the fuel height probes developed by the original equipment manufacturer. The probes are replaced with a Goodrich-designed FQI probe installed per STC 00092BO. The commenter states that the STC has been implemented by Goodrich customers and they are requesting assistance to obtain compliance with the requirements of the proposed AD. The commenter proposes to develop a service bulletin to perform a one-time inspection of the STC installation. The commenter would provide substantiating data to the FAA for review and approval after the service bulletin is developed. The commenter asks that the service bulletin be approved as an AMOC to the proposed AD. Records substantiating the inspections and corrective actions would be provided to the FAA by operators. The commenter adds that this approach was previously implemented by Goodrich for STC ST00020BO and the related AD. The commenter suggests that we review the suggested compliance option for the STC and provide a recommendation for the preferred approach for implementation. The commenter adds that, depending on the schedule for release of the proposed AD, it can prepare and provide the STC service bulletin for incorporation into the proposed AD. The commenter asks that we inform them if this approach is viable, and include the lead time required by our office for such incorporation.

We cannot approve the use of a document that does not yet exist, and in consideration of the urgency of the identified unsafe condition and the amount of time that has already elapsed since the proposed AD was issued, we have determined that further delay of this final rule is not appropriate. However, if a new service bulletin is developed in the future, the commenter may request approval to use it as an alternative method of compliance under the provisions of paragraph (d)(1) of this final rule.

## Conclusion

After careful review of the available data, including the comments noted above, we have determined that air safety and the public interest require the adoption of the rule as proposed.

## Cost Impact

There are approximately 115 airplanes of U.S. registry that will be affected by this AD.

The inspection that is currently required by AD 2001-13-09 takes about 7 work hours per airplane to accomplish, at an average labor rate of \$65 per work hour. Based on these figures, the cost impact of the currently required inspection is estimated to be \$455 per airplane.

It will take about 5 work hours per airplane to accomplish the new inspection, specified in Airbus Service Bulletin A310-28-2145, at an average labor rate of \$65 per work hour. Based on these figures, the cost impact of this inspection is estimated to be \$325 per airplane.

It will take about 10 work hours per airplane to accomplish the new inspection of the wing fuel tank, and about 5 work hours per airplane to accomplish the new inspection of the trim fuel tank, specified in Airbus Service Bulletin A300-28-6065, at an average labor rate of \$65 per work hour. Based on these figures, the cost impact of these inspections is estimated to be \$650 per wing fuel tank, and \$325 per trim fuel tank, per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

## Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic

impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

## List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

## Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### \$39.13 [Amended]

■ 2. Section 39.13 is amended by removing amendment 39-12289 (66 FR 34088, June 27, 2001), and by adding a new airworthiness directive (AD), amendment 39-13499, to read as follows:

**2004-05-05 Airbus:** Amendment 39-13499. Docket 2002-NM-113-AD. Supersedes AD 2001-13-09, Amendment 39-12289.

**Applicability:** All Model A300 B2-1C, B2-203, B2K-3C, B4-2C, B4-103, and B4-203 series airplanes; Model A300 B4-600, B4-600R, and F4-600R (collectively called A300-600) series airplanes, except those on which Airbus Modification 12278 has been accomplished in production; and Model A310 series airplanes, except those on which Airbus Modification 12248 has been accomplished in production; certificated in any category.

**Compliance:** Required as indicated, unless accomplished previously.

To prevent the possibility of electrical arcing to the fuel tank if the airplane should be struck by lightning, which could create a potential ignition source within the fuel tank and an increased risk of a fuel tank explosion and fire, accomplish the following:

## Restatement of Requirements of AD 2001-13-09

### Inspection

(a) For Model A300 B2-1C, B2-203, B2K-3C, and A300 B4 series airplanes: Within 4,000 flight hours after August 1, 2001 (the effective date of AD 2001-13-09, amendment 39-12289), inspect the clearance space from each fuel quantity indication (FQI) probe to any adjacent structure or metallic component, in accordance with Airbus Service Bulletin A300-28-0080, dated

September 28, 2000; or Revision 01, dated September 3, 2001.

#### New Requirements of This AD

##### Detailed Inspection

(b) For Model A300-600 and A310 series airplanes: Within 4,000 flight hours after the effective date of this AD; do a detailed inspection of the clearance space from each FQI probe to any adjacent structure or metallic component, in accordance with Airbus Service Bulletin A300-28-6065, dated March 29, 2001, or Revision 01, dated August 31, 2001, or Revision 02, dated August 1, 2002; or Airbus Service Bulletin A310-28-2145, dated August 21, 2001; as applicable.

**Note 1:** For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

##### Clearance Adjustment

(c) If, during any inspection required by this AD, the clearance between any probe and its adjacent parts is less than 3.0 mm (0.118 in.), as described in Airbus Service Bulletin A300-28-0080, dated September 28, 2000, or Revision 01, dated September 3, 2001, or Airbus Service Bulletin A300-28-6065, dated March 29, 2001, or Revision 01, dated August 31, 2001, or Revision 02, dated August 1, 2002; or Airbus Service Bulletin A310-28-2145, dated August 21, 2001: Before further flight, adjust the position of the FQI probe in accordance with paragraph 3.C. of the Accomplishment Instructions of the applicable service bulletin.

##### Alternative Methods of Compliance

(d)(1) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM-116, FAA, is authorized to approve alternative methods of compliance for this AD.

(2) Alternative methods of compliance, approved previously per AD 2001-13-09, amendment 39-12289, are approved as alternative methods of compliance with paragraph (a) of this AD.

##### Incorporation by Reference

(e) The actions shall be done in accordance with Airbus Service Bulletin A300-28-0080, dated September 28, 2000; Airbus Service Bulletin A300-28-0080, Revision 01, dated September 3, 2001; Airbus Service Bulletin A300-28-6065, dated March 29, 2001; Airbus Service Bulletin A300-28-6065, Revision 01, dated August 31, 2001; Airbus Service Bulletin A300-28-6065, Revision 02, dated August 1, 2002; and Airbus Service Bulletin A310-28-2145, dated August 21, 2001; as applicable.

(1) The incorporation by reference of Airbus Service Bulletin A300-28-0080, Revision 01, dated September 3, 2001; Airbus Service Bulletin A300-28-6065, dated March 29, 2001; Airbus Service Bulletin A300-28-

6065, Revision 01, dated August 31, 2001; Airbus Service Bulletin A300-28-6065, Revision 02, dated August 1, 2002; and Airbus Service Bulletin A310-28-2145, dated August 21, 2001; is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Airbus Service Bulletin A300-28-0080, dated September 28, 2000; was approved previously by the Director of the Federal Register as of August 1, 2001 (66 FR 34088, June 27, 2001).

(3) Copies may be obtained from Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Note 2:** The subject of this AD is addressed in French airworthiness directive 2002-170(B), dated April 3, 2002.

##### Effective Date

(f) This amendment becomes effective on April 9, 2004.

Issued in Renton, Washington, on February 20, 2004.

**Kalene C. Yanamura,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 04-4565 Filed 3-4-04; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 2004-NM-17-AD; Amendment 39-13505; AD 2004-05-10]

**RIN 2120-AA64**

#### Airworthiness Directives; Boeing Model 767 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, that currently requires repetitive detailed visual inspections of the aft pressure bulkhead for damage and cracking, and repair if necessary. That AD also requires additional eddy current inspections prior to the airplane accumulating 25,000 flight cycles. This amendment requires a reduction of the interval for the detailed and repetitive eddy current inspections. The actions specified in this AD are intended to prevent fatigue cracking of the aft pressure bulkhead, which could result in rapid depressurization of the airplane

and possible damage or interference with the airplane control systems that penetrate the bulkhead, and consequent loss of controllability of the airplane. This action is intended to address the identified unsafe condition.

**DATES:** Effective March 22, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 22, 2004.

Comments for inclusion in the Rules Docket must be received on or before May 4, 2004.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2004-NM-17-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227-1232. Comments may also be sent via the Internet using the following address: [9-anm-iarcomment@faa.gov](mailto:9-anm-iarcomment@faa.gov). Comments sent via fax or the Internet must contain "Docket No. 2004-NM-17-AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in this AD may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Suzanne Masterson, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 917-6441; fax (425) 917-6590.

**SUPPLEMENTARY INFORMATION:** On February 27, 1990, the FAA issued AD 88-19-03 R1, amendment 39-6532 (55 FR 8118, March 7, 1990), applicable to certain Boeing Model 767 series airplanes, to require repetitive detailed visual inspections of the aft pressure bulkhead for damage and cracking, and repair if necessary. That AD also requires additional eddy current inspections prior to the airplane accumulating 25,000 flight cycles. That action was prompted by reports of cracking detected during fatigue testing



of the aft pressure bulkhead. The actions required by that AD are intended to prevent failure of the aft pressure bulkhead and depressurization of the airplane.

#### Actions Since Issuance of Previous Rule

Since the issuance of that AD, we have received a report of multiple-site fatigue cracking in two lap splices on the aft pressure bulkhead of one airplane. The airplane had accumulated approximately 32,000 total flight cycles. The repetitive inspection intervals required by AD 88-19-03 R1 are based on the damage tolerance capability of the structure with a single crack rather than multiple-site crack pattern. Such fatigue cracking of the aft pressure bulkhead could result in rapid depressurization of the airplane and possible damage or interference with the airplane control systems that penetrate the bulkhead, and consequent loss of controllability of the airplane.

#### New Service Information

We have approved Boeing Alert Service Bulletin (ASB) 767-53A0026, Revision 5, dated January 29, 2004. (The original and Revision 1 of this ASB were the appropriate service information referenced in AD 88-19-03 R1.) Revision 5 of the ASB describes procedures for repetitive detailed inspections for damage (e.g., nicks, tears, scratches, dents, and corrosion) of the aft pressure bulkhead, and repair if necessary. The ASB also describes procedures for repetitive high frequency and low frequency eddy current inspections for cracking of body station (BS) 1582 bulkhead, web lap splices, and tearstrap splices, and repair if necessary. Revision 5 of the ASB also recommends a reduction of the repetitive intervals for those inspections from 6,000 flight cycles to 1,800 flight cycles. Additionally, the ASB describes procedures for a one-time detailed inspection and a high frequency eddy current inspection of the web to determine if any "oil cans" are present, and repair if necessary.

#### Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of this same type design, this AD supersedes AD 88-19-03 R1 to require the actions specified in the ASB described previously, except as described below.

#### Differences Between the ASB and the AD

Although Boeing ASB 767-53A0026, Revision 5, dated January 29, 2004, contains procedures for a one-time

detailed inspection and a high frequency eddy current inspection of the web to determine if any "oil cans" are present, and repair if necessary, this AD does not require those actions. We have determined that those actions do not represent the urgency of the other procedures specified in the ASB. Therefore, we are considering separate rulemaking to propose those actions.

The Boeing ASB also provides the following information in Note 6 of the Accomplishment Instructions: "For the purposes of this service bulletin, do not count flight-cycles with a cabin pressure differential of 2.0 [pounds per square inch (psi)] or less. However, any flight-cycle with momentary spikes in cabin pressure differential above 2.0 psi must be included as a full-pressure flight-cycle. Cabin pressure records must be maintained for each airplane. Fleet averaging of cabin pressure is not allowed." This AD, however, does not permit such allowances for the new requirements of this AD. We consider that numerous factors, such as total number of low pressure cycles, amount of thrust, number of gross weight flight cycles, etc., affect the calculation of flight cycles. We find that these mitigating factors can be best evaluated through requests for alternative methods of compliance, as provided for in paragraph (g)(1) of this AD. Operators should note that, although AD 88-19-03 R1 provides for such allowance, we have removed such provision in this AD for the reasons stated previously.

Additionally, the Accomplishment Instructions of the ASB specify that operators may contact the manufacturer for disposition of certain repair instructions. This AD requires that, if repair requirements exceed allowable repair criteria, operators must repair per a method approved by the FAA or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings.

#### Editorial Changes to the AD

Paragraphs referenced in the "Restatement of the Requirements of AD 88-19-03 R1" section of this AD have been renumbered to conform to the current AD formatting style.

#### Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

#### Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2004-NM-17-AD." The postcard will be date stamped and returned to the commenter.

#### Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.



The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

#### Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

#### PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

##### § 39.13 [Amended]

■ 2. Section 39.13 is amended by removing amendment 39–6532 (55 FR 8118, March 7, 1990), and by adding a new airworthiness directive (AD), amendment 39–13505, to read as follows:

**2004–05–10 Boeing:** Amendment 39–13505. Docket 2004–NM–17–AD. Supersedes AD 88–19–03 R1, Amendment 39–6532.

**Applicability:** Model 767 series airplanes, line number 001 through 175 inclusive; certificated in any category.

**Compliance:** Required as indicated, unless accomplished previously.

To prevent fatigue cracking of the aft pressure bulkhead, which could result in rapid depressurization of the airplane and possible damage or interference with the airplane control systems that penetrate the bulkhead, and consequent loss of controllability of the airplane; accomplish the following:

#### Restatement of AD 88–09–03 R1

(a) Prior to the accumulation of 6,000 flight cycles or within the next 1,000 flight cycles after September 26, 1988 (effective date of AD 88–09–03 R1, amendment 39–6001), whichever occurs later, unless accomplished within the last 5,000 flight cycles, and

thereafter at intervals not to exceed 6,000 flight cycles, perform a detailed inspection of the aft side of the entire body station 1582 pressure bulkhead for damage (as defined in the Structural Repair Manual) and cracking, in accordance with Boeing Service Bulletin 767–53–0026, dated November 19, 1987; or Revision 1, dated March 16, 1989.

(b) Prior to the accumulation of 25,000 flight cycles, and thereafter at intervals not to exceed 6,000 flight cycles, perform an eddy current inspection of the body station 1582 pressure bulkhead, in accordance with paragraph C. of the Accomplishment Instructions of Boeing Service Bulletin 767–53–0026, Revision 1, dated March 16, 1989.

(c) For the purpose of complying with the requirements of paragraphs (a) and (b) of this AD, the number of flight cycles may be determined to equal the number of pressurization cycles where the cabin pressure differential was equal to or greater than 2.0 PSI. The pressurization allowance does not apply to the requirements of paragraph (e) of this AD.

(d) Repair all damage and cracking detected during the inspections specified in paragraphs (a) and (b) of this AD, prior to further flight in accordance with Note 4 in the Accomplishment Instructions of Boeing Service Bulletin 767–53–0026, Revision 1, dated March 16, 1989. After the effective date of this AD, repair must be accomplished per Boeing Alert Service Bulletin (ASB) 767–53A0026, Revision 5, dated January 29, 2004.

#### New Requirements of this AD

##### Detailed Inspection

**Note 1:** For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

##### Detailed Inspections and Eddy Current Inspections

(e) Perform a detailed inspection for damage and cracking of the aft side of the aft pressure bulkhead and perform high frequency and low frequency eddy current inspections for cracking of the aft pressure bulkhead, per the Accomplishment Instructions of Boeing ASB 767–53A0026, Revision 5, dated January 29, 2004, at the later of the times specified in paragraph (e)(1) or (e)(2) of this AD. Thereafter, repeat these inspections at intervals not to exceed 1,800 flight cycles. Accomplishment of the initial inspections required by this paragraph, terminate the inspection requirements of paragraphs (a) and (b) of this AD.

(1) Prior to the accumulation of 25,000 total flight cycles, or within 1,800 flight cycles after the most recent inspection done per AD 88–19–03 R1, whichever occurs later; or

(2) Within 90 days after the effective date of this AD.

#### Repair Requirements

(f) If any damage or cracking is detected during any inspections required by paragraph (e) of this AD: Before further flight accomplish the requirements of paragraph (f)(1) or (f)(2) of this AD, as applicable:

(1) For repairs within the limits of the Accomplishment Instructions of Boeing ASB 767–53A0026, Revision 5, dated January 29, 2004, repair per the ASB.

(2) For any repairs outside the limits, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative (DER) who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved, as required by this paragraph, the approval must specifically reference this AD.

#### Alternative Methods of Compliance (AMOC)

(g)(1) In accordance with 14 CFR 39.19, the Manager, Seattle ACO, FAA, is authorized to approve AMOCs for this AD.

(2) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by a Boeing Company DER who has been authorized by the Manager, Seattle ACO, to make such findings.

(3) AMOCs approved previously for paragraph (c) of AD 88–19–03 R1, amendment 39–6532, are approved as AMOCs with paragraph (f) of this AD.

#### Incorporation by Reference

(h) Unless otherwise specified in this AD, the actions shall be done in accordance with Boeing Service Bulletin 767–53–0026, dated November 19, 1987; Boeing Service Bulletin 767–53–0026, Revision 1, dated March 16, 1989; and Boeing Alert Service Bulletin 767–53A0026, Revision 5, dated January 29, 2004; as applicable. This incorporation by reference is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

#### Effective Date

(i) This amendment becomes effective on March 22, 2004.

Issued in Renton, Washington, on February 24, 2004.

**Kalene C. Yanamura,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*  
[FR Doc. 04–4660 Filed 3–4–04; 8:45 am]

**BILLING CODE 4910–13–P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 71**

[Docket No. FAA-2003-15249; Airspace  
Docket No. 2003-ASW-4]

**Amendment to Class D Airspace;  
Cannon Air Force Base, NM**

**AGENCY:** Federal Aviation  
Administration (FAA), DOT.

**ACTION:** Direct final rule; request for  
comments.

**SUMMARY:** This action revises the Class  
D airspace area at Clovis, NM, Cannon  
AFB (CVS) to provide controlled  
airspace for Category (CAT) E aircraft  
performing a circling approach within  
Class D.

**DATES:** Effective 0901 UTC, April 15,  
2004.

Comments for inclusion in the Rules  
Docket must be received on or before  
April 5, 2004.

**ADDRESSES:** Send comments on the rule  
to the Docket Management System, U.S.  
Department of Transportation, Room  
Plaza 401, 400 Seventh Street, SW.,  
Washington, DC 20590-0001. You must  
identify the docket number, FAA-2003-  
15249/Airspace Docket No. 2003-ASW-  
4, at the beginning of your comments.  
You may also submit comments on the  
Internet at <http://dms.dot.gov>. You may  
review the public docket containing,  
any comments received, and this Direct  
Final Rule in person at the Dockets  
Office between 9 a.m. and 5 p.m.,  
Monday through Friday, except Federal  
holidays. The Docket Office (telephone  
1-800-647-5527) is located on the plaza  
level of the Department of  
Transportation NASSIF Building at the  
street address stated previously.

An informal docket may also be  
examined during normal business hours  
at the office of the Air Traffic Division,  
Airspace Branch, Federal Aviation  
Administration, Southwest Region, 2601  
Meacham Boulevard, Fort Worth, TX.  
Call the manager, Airspace Branch,  
ASW-520, telephone (817) 222-5520;  
fax (817) 222-5981, to make  
arrangements for your visit.

The official docket file may be  
examined in the Office of the Regional  
Counsel, Southwest Region, Federal  
Aviation Administration, 2601  
Meacham Boulevard, Fort Worth, TX,  
between 9 a.m. and 3 p.m., Monday  
through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:**  
Joseph R. Yadouga, Air Traffic Division,  
Airspace Branch, Federal Aviation  
Administration, Southwest Region, Fort

Worth, TX 76193-0520; telephone (817)  
222-5597.

**SUPPLEMENTARY INFORMATION:** This  
amendment to 14 CFR part 71 modifies  
Class D airspace designations for  
airspace areas from the surface up to  
and including 6,800 MSL of Cannon  
AFB, NM are published in paragraph  
5000 of FAA Order 7400.9L, dated  
September 2, 2003, and effective  
September 16, 2003, which is  
incorporated by reference in 14 CFR  
71.1. The Class D airspace designation  
listed in this document will be  
published subsequently in this Order.

**The Direct Final Rule Procedure**

The FAA anticipates that this  
regulation will not result in adverse or  
negative comment, and, therefore, issues  
it as a direct final rule. The FAA has  
determined that this regulation only  
involves an established body of  
technical regulations for which frequent  
and routine amendments are necessary  
to keep them operationally current.  
Unless a written adverse or negative  
comment, or a written notice of intent  
to submit an adverse or negative  
comment is received within the  
comment period, the regulation will  
become effective on the date specified.  
After the close of the comment period,  
the FAA will publish a document in the  
**Federal Register** indicating that no  
adverse or negative comments were  
received and confirming the date on  
which the final rule will become  
effective. If the FAA does receive,  
within the comment period, an adverse  
or negative comment, or written notice  
of intent to submit such a comment, a  
document withdrawing the direct final  
rule will be published in the **Federal  
Register**, and a notice of proposed  
rulemaking may be published with a  
new comment period.

**Comments Invited**

Although this action in the form of a  
direct final rule, and was not preceded  
by a notice of proposed rulemaking,  
interested persons are invited to  
comment on this rule by submitting  
such written data, views, or arguments  
as they may desire. Communications  
must identify both docket numbers. All  
communications received on or before  
the closing date for comments will be  
considered, and this rule may be  
amended or withdrawn in light of the  
comments received. Factual information  
that supports the commenter's ideas and  
suggestions is extremely helpful in  
evaluating the effectiveness of this  
action and determining whether  
additional rulemaking action would be  
needed.

Comments are specifically invited on  
the overall regulatory, economic,  
environmental, and energy aspects of  
the rule that might suggest a need to  
modify the rule. All comments  
submitted will be available, both before  
and after the closing date for comments,  
in the Rules Docket for examination by  
interested persons. A report that  
summarizes each FAA-public contact  
concerned with the substance of this  
action will be filed in the Rules Docket.

**Agency Findings**

This rule does not have federalism  
implications, as defined in Executive  
Order No. 13132, because it does not  
have a substantial direct effect on the  
States, on the relationship between the  
national government and the States, or  
on the distribution of power and  
responsibilities among the various  
levels of government. Accordingly, the  
FAA has not consulted with state  
authorities prior to publication of this  
rule.

The FAA has determined that this  
regulation is noncontroversial and  
unlikely to result in adverse or negative  
comments. For the reasons discussed in  
the preamble, I certify that this  
regulation (1) is not a "significant  
regulatory action" under Executive  
order 12866; (2) is not a "significant  
rule" under Department of  
Transportation (DOT) Regulatory  
Policies and Procedures (44 FR 11034,  
February 26, 1979); and (3) does not  
warrant preparation of a Regulatory  
Evaluation as these routine matters will  
only affect air traffic procedures and air  
navigation. It is certified that these  
proposed rules will not have significant  
economic impact on a substantial  
number of small entities under the  
criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference,  
Navigation (air).

**Adoption of the Amendment**

■ Accordingly, pursuant to the authority  
delegated to me, the Federal Aviation  
Administration amends part 71 of the  
Federal Aviation Regulations (14 CFR  
part 71) as follows:

**PART 71—DESIGNATION OF CLASS A,  
CLASS B, CLASS C, CLASS D, AND  
CLASS E AIRSPACE AREAS;  
AIRWAYS; ROUTES; AND REPORTING  
POINTS**

■ 1. The authority citation for part 71  
continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113,  
40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959-  
1963 Comp., 0.389.

**§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9L, Airspace Designations and Reporting Points, dated September, 2003, and effective September 16, 2003, is amended as follows:

*Paragraph 5000 Class D Airspace Areas Extending Upward From the Surface of the Earth.*

\* \* \* \* \*

**ASW NM D Clovis, NM [Revised]**

Cannon AFB, NM

(Lat. 34°22'58" N., Long. 103°19'20" W.)

That airspace extending upward from the surface to and including 6,800 feet MSL within a 6-mile radius of Cannon AFB.

\* \* \* \* \*

Issued in Fort Worth, TX, on February 25, 2004.

**Donald R. Smith,**

*Acting Director of En Route and Oceanic Central Area Operations.*

[FR Doc. 04-5029 Filed 3-4-04; 8:45 am]

**BILLING CODE 4910-13-M**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 71**

[Docket No. FAA-2003-15248; Airspace Docket No. 2003-ASW-3]

**Amendment to Class D Airspace; Altus AFB, OK**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Direct final rule; request for comments.

**SUMMARY:** This action revises the Class D airspace area at Altus Air Force Base, OK (LTS) to provide controlled airspace for Category (CAT) E aircraft performing a circling approach within Class D.

**DATES:** Effective 0901 UTC, April 15, 2004.

Comments for inclusion in the Rules Docket must be received on or before April 5, 2004.

**ADDRESSES:** Send comments on the rule to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590-0001. You must identify the docket number, FAA-2003-15248/Airspace Docket No. 2003-ASW-3, at the beginning of your comments. You may also submit comments on the Internet at <http://dms.dot.gov>. You may review the public docket containing, any comments received, and this Direct Final Rule in person at the Dockets

Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1-800-d647-5527) is located on the plaza level of the Department of Transportation NASSIF Building at the street address stated previously.

An informal docket may also be examined during normal business hours at the office of the Air Traffic Division, Airspace Branch, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX. Call the manager, Airspace Branch, ASW-520, telephone (817) 222-5520; fax (817) 222-5981, to make arrangements for your visit.

**FOR FURTHER INFORMATION CONTACT:**

Joseph R. Yadouga, Air Traffic Division, Airspace Branch, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193-0520; telephone: (817) 222-5597.

**SUPPLEMENTARY INFORMATION:** This amendment to 14 CFR Part 71 modifies Class D airspace designations for airspace areas from the surface up to and including 3,900 MSL of Altus AFB, OK are published in paragraph 5000 of FAA Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document will be published subsequently in this Order.

**The Direct Final Rule Procedure**

The FAA anticipates that this regulation will not result in adverse or negative comment, and, therefore, issues it as a direct final rule. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

**Comments Invited**

Although this action is in the form of a direct final rule, and was not preceded by a notice of proposed rulemaking, interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications must identify both docket numbers. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

**Agency Findings**

This rule does not have federalism implications, as defined in Executive Order No. 13132, because it does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this rule.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as these routine matters will only affect air traffic procedures and air navigation. It is certified that these proposed rules will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**Adoption of the Amendment**

■ Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

**PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS**

■ 1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9L, Airspace Designations and Reporting Points, dated September 2, 2003, and effective September 16, 2003, as amended as follows:

*Paragraph 500 Class D Airspace Areas Extending Upward From the Surface of the Earth.*

\* \* \* \* \*

**ASW OK D Altus AFB, OK [Revised]**

Altus AFB, OK

(Lat. 34°39'30" N., Long. 99°16'0" W.)

That airspace extending upward from the surface to and including 3,900 feet MSL within a 6-mile radius of Altus AFB.

\* \* \* \* \*

Issued in Fort Worth, TX, on February 25, 2004.

**Donald R. Smith,**

*Acting Director of En Route and Oceanic Central Area Operations.*

[FR Doc. 04–5030 Filed 3–4–04; 8:45 am]

**BILLING CODE 4910–13–M**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 71**

[Docket No. FAA–2003–15247; Airspace Docket No. 2003–ASW–2]

**Amendment to Class D Airspace; Little Rock AFB, AR**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Direct final rule; request for comments.

**SUMMARY:** This action revises the Class D airspace area at Little Rock Air Force Base, AR (LRF) to provide controlled airspace for Category (CAT) E aircraft performing a circling approach within Class D.

**DATES:** Effective 0901 UTC, April 15, 2004.

Comments for inclusion in the Rules Docket must be received on or before April 5, 2004.

**ADDRESSES:** Send comments on the rule to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number, FAA–2003–15247/Airspace Docket No. 2003–ASW–2, at the beginning of your comments. You may also submit comments on the Internet at <http://dms.dot.gov>. You may review the public docket containing any comments received, and this Direct Final Rule in person at the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is located on the plaza level of the Department of Transportation NASSIF Building at the street address stated previously.

An informal docket may also be examined during normal business hours at the office of the Air Traffic Division, Airspace Branch, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX. Call the manager, Airspace Branch, ASW–520, telephone (817) 222–5520; fax (817) 222–5981, to make arrangements for your visit.

**FOR FURTHER INFORMATION CONTACT:**

Joseph R. Yadouga, Air Traffic Division, Airspace Branch, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0520; telephone (817) 222–5597.

**SUPPLEMENTARY INFORMATION:** This amendment to 14 CFR part 71 modifies Class D airspace designations for airspace areas from the surface up to and including 2,800 MSL of Little Rock AFB, AR and are published in paragraph 5000 of FAA Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document will be published subsequently in this Order.

**The Direct Final Rule Procedure**

The FAA anticipates that this regulation will not result in adverse or negative comment, and, therefore, issues it as a direct final rule. The FAA has determined that this regulation only involves an established body of

technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

**Comments Invited**

Although this action is in the form of a direct final rule, and was not preceded by a notice of proposed rulemaking, interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications must identify both docket numbers. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

**Agency Findings**

This rule does not have federalism implications, as defined in Executive Order No. 13132, because it does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state

authorities prior to publication of this rule.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (e) does not warrant preparation of a Regulatory Evaluation as these routine matters will only affect air traffic procedures and air navigation. It is certified that these proposed rules will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

#### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

#### Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

#### PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS.

■ 1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p.389.

##### § 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9L, Airspace Designations and Reporting Points, dated September 2, 2003, and effective September 16, 2003, is amended as follows:

*Paragraph 5000 Class D Airspace Areas Extending Upward From the Surface of the Earth.*

\* \* \* \* \*

#### ASW AR D Little Rock AFB, AR [Revised]

Little Rock AFB, AR  
(Lat 34°55'00" N., Long. 92°08'48" W.)

That airspace extending upward from the surface to and including 2,800 feet MSL within a 5.6-mile radius of Little Rock AFB airport, excluding that airspace within the Little Rock, Adams Field, AR, Class C airspace area.

\* \* \* \* \*

Issued in Fort Worth, TX on February 25, 2004.

**Donald R. Smith,**

*Acting Director of En Route and Oceanic Central Area Operations.*

[FR Doc. 04–5031 Filed 3–4–04; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Docket No. FAA–2004–17146; Airspace Docket No. 04–ACE–12]

#### Modification of Class E Airspace; Charleston, MO

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Direct final rule; request for comments.

**SUMMARY:** This action modifies the Class E airspace area at Charleston, MO. A review of controlled airspace for Mississippi County Airport indicates it does not comply with the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures. The review also revealed a discrepancy in the extension to the Class E airspace. The area is modified and enlarged to conform to the criteria in FAA Orders. **DATES:** This direct final rule is effective on 0901 UTC, June 10, 2004. Comments for inclusion in the Rules Docket must be received on or before April 15, 2004.

**ADDRESSES:** Send comments on this document to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2004–17146/ Airspace Docket No. 04–ACE–12, at the beginning of your comments. You may also submit comments on the Internet at <http://dms.dot.gov>. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

**FOR FURTHER INFORMATION CONTACT:** Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Municipal Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

**SUPPLEMENTARY INFORMATION:** This amendment to 14 CFR 71 modifies the

Class E airspace area extending upward from 700 feet above the surface at Charleston, MO. An examination of controlled airspace for Mississippi County Airport reveals it does not meet the criteria for 700 feet AGL airspace required for diverse departures as specified in FAA Order 7400.2E, Procedures for Handling Airspace Matters. The criteria in FAA Order 7400.2E for an aircraft to reach 1200 feet AGL is based on a standard climb gradient of 200 feet per mile plus the distance from the airport reference point (ARP) to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. This amendment expands the airspace area from a 6-mile radius to a 6.3-mile radius of Mississippi County Airport. This amendment also redefines the centerline of the south extension from the 187° bearing from the Charleston nondirectional radio beacon (NDB) to the 190° bearing and brings the legal description of the Charleston, MO Class E airspace area into compliance with FAA Order 7400.2E. This area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9L, Airspace Designations and Reporting Points, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

#### The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, as adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

## Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA-2004-17146/Airspace Docket No. 04-ACE-12." The postcard will be date/time stamped and returned to the commenter.

## Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

## List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

## Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

### § 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, is amended as follows:

\* \* \* \* \*

*Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.*

\* \* \* \* \*

### ACE MO E5 Charleston, MO

Charleston, Mississippi County Airport, MO (Lat. 36°50'32" N., long. 89°21'35" W.)

Charleston NDB

(Lat. 36°50'42" N., long. 89°21'24" W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Mississippi County Airport and within 2.6 miles each side of the 190° bearing from the Charleston NDB extending from the 6.3 mile radius of the airport to 7 miles south of the NDB.

\* \* \* \* \*

Issued in Kansas City, MO, on February 24, 2004.

**Paul J. Sheridan,**

*Acting Manager, Air Traffic Division, Central Region*

[FR Doc. 04-5037 Filed 3-4-04; 8:45 am]

**BILLING CODE 4910-13-M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Docket No. FAA-2003-15246; Airspace Docket No. 2003-ASW-1]**

### Amendment to Class E Airspace; Angel Fire, NM

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Direct final rule; request for comments.

**SUMMARY:** This action revises the Class E airspace area at Angel Fire Airport, Angel Fire, NM (AXX) to provide adequate controlled airspace for the area navigation (RNAV) global positioning system (GPS) standard instrument approach procedure (SIAP).

**DATES:** Effective 0901 UTC April 15, 2004.

Comments for inclusion in the Rules Docket must be received on or before April 5, 2004.

**ADDRESSES:** Send comments on the rule to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590-0001. You must identify the docket number, FAA-2003-15246/Airspace Docket No. 2003-ASW-1, at the beginning of your comments. You may also submit comments on the Internet at <http://dms.dot.gov>. You may review the public docket containing any comments received, and this direct final rule in person at the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1-800-647-5527) is located on the plaza level of the Department of Transportation NASSIF Building at the street address stated previously.

An informal docket may also be examined during normal business hours at the office of the Air Traffic Division, Airspace Branch, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX. Call the manager, Airspace Branch, ASW-520, telephone (817) 222-5520; fax (817) 222-5981, to make arrangements for your visit.

**FOR FURTHER INFORMATION CONTACT:** Joseph R. Yadouga, Air Traffic Division, Airspace Branch, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193-0520; telephone: (817) 222-5597.

**SUPPLEMENTARY INFORMATION:** This amendment to 14 CFR part 71 modifies Class E airspace area extending upward from 700 feet above the surface of Angel Fire, NM and are published in paragraph 6005 of FAA Order 7400.9L dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

### The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment, and, therefore, issues it as a direct final rule. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the

comment period, the regulation will become effective on the date specified. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA receives, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

#### Comments Invited

Although this action is in the form of a direct final rule, and was not preceded by a notice of proposed rulemaking, interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications must identify both docket numbers. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

#### Agency Findings

This rule does not have federalism implications, as defined in Executive order No. 13132, because it does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this rule.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant

regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as these routine matters will only affect air traffic procedures and air navigation. It is certified that these proposed rules will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

#### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

#### Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

#### PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p.389.

##### § 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9L, Airspace Designations and Reporting Points, dated September 2, 2003, and effective September 16, 2003, is amended as follows:

*Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.*

\* \* \* \* \*

#### ASW NM E5 Angel Fire, NM Revised

Angel Fire Airport, NM  
(Lat 36°25'19" N., Long. 105°27'24" W.)

That airspace extending up from 700 feet above the surface within a 6 mile radius of the Angel Fire Airport, and within 2-miles either side of the 005° bearing from the airport extending from the 6-mile radius to 9-miles north of the airport; that airspace extending upward from 1200 feet above the surface bounded by a line beginning at lat. 36°38'58" N., long. 105°17'23" W., to lat. 36°39'10" N., long. 105°10'40" W., to lat. 36°22'25" N., long. 105°12'30" W., to lat. 36°11'50" N., long. 105°10'00" W., to lat. 36°12'20" N., long. 105°24'00" W., to lat. 36°36'00" N., long. 105°21'10" W., to lat. 36°38'10" N., long. 105°22'30" W., to the point of beginning; and that airspace extending upward from 12,000 ft MSL

bounded by a line beginning at lat. 36°38'58" N., long. 105°17'23" W., to lat. 36°32'15" N., long. 105°57'20" W., to lat. 36°39'10" N., long. 106°00'40" W., to lat. 36°51'10" N., long. 105°19'30" W., to lat. 36°46'20" N., long. 104°43'00" W., to lat. 36°25'00" N., long. 104°48'30" W., to lat. 36°26'30" N., long. 104°58'30" W., to lat. 36°38'50" N., long. 104°55'00" W., to the point of beginning; and that airspace extending upward from 12,000 feet MSL bounded by a line beginning at lat. 36°12'07" N., long. 105°18'13" W., to lat. 36°11'50" N., long. 105°10'00" W., to lat. 36°08'00" N., long. 104°54'00" W., to lat. 35°39'50" N., long. 105°02'30" W., to lat. 35°39'50" N., long. 105°13'30" W., to lat. 36°02'00" N., long. 105°18'10" W., to lat. 36°06'25" N., long. 106°03'40" W., to lat. 36°13'50" N., long. 106°02'40" W., to point of beginning; excluding that airspace within Federal Airways, the Taos, NM, the Raton, NM, the Las Vegas, NM, Class E airspace areas.

\* \* \* \* \*

Dated: Issued in Fort Worth, TX, on February 25, 2004.

**Donald R. Smith,**

*Acting Director of En Route and Oceanic Central Area Operations.*

[FR Doc. 04–5032 Filed 3–4–04; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Docket No. FAA–2003–16757; Airspace Docket No. 03–ACE–95]

#### Modification of Class E Airspace; Chanute, KS

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Direct final rule; confirms the effective date.

**SUMMARY:** This document confirms the effective date of the direct final rule which revises Class E airspace at Chanute, KS.

**EFFECTIVE DATE:** 0901 UTC, April 15, 2004.

#### FOR FURTHER INFORMATION CONTACT:

Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

**SUPPLEMENTARY INFORMATION:** The FAA published this direct final rule with a request for comments in the **Federal Register** on January 12, 2004 (69 FR 1672). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse



public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on April 15, 2004. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO, on February 24, 2004.

**Paul J. Sheridan,**

*Acting Manager, Air Traffic Division, Central Region.*

[FR Doc. 04-5034 Filed 3-4-04; 8:45 am]

BILLING CODE 4910-13-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Docket No. FAA-2004-16989; Airspace Docket NO. 04-ACE-7]

#### Modification of Class E Airspace; Hays, KS

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Direct final rule; request for comments.

**SUMMARY:** This action modifies Class E airspace areas at Hays, KS and their legal descriptions. The Hays Municipal Airport airport reference point (ARP) is revised, the Class E airspace surface area and Class E airspace area extending upward from 700 feet above the surface are each expanded and the extensions to these airspace areas are redefined. The effect of this rule is to amend the Hays, KS Class E airspace areas and their legal descriptions, to incorporate the correct Hays Regional Airport airport reference point and to comply with criteria of FAA Order 7400.2E, Procedures for Handling Airspace Matters.

**DATES:** This direct final rule is effective on 0901 UTC, June 10, 2004. Comments for inclusion in the Rules Docket must be received on or before April 13, 2004.

**ADDRESSES:** Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590-0001. You must identify the docket number FAA-2004-16989/Airspace Docket No. 043-ACE-7, at the beginning of your comments. You may also submit comments on the Internet at <http://dms.dot.gov>. You may review the

public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1-800-647-5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

#### FOR FURTHER INFORMATION CONTACT:

Kathy Randolph, Air Traffic Division, Airspace Branch, ACE-520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone (816) 329-2525.

**SUPPLEMENTARY INFORMATION:** This amendment to 14 CFR 71 modifies the Hays, KS Class E airspace areas and their legal descriptions and brings them into compliance with FAA Order 7400.2E. The National Aeronautical Charting Office has redefined the Hays Municipal Airport ARP. The Hays Municipal Airport ARP is used in the legal descriptions of the Hays, KS Class E airspace surface area and Class E airspace area extending upward from 700 feet above the surface. The ARP is also used in the computation of the radius about the airport defining the Class E airspace areas. The radius of controlled airspace for each Hays, KS Class E airspace is expanded by .1 mile to comply with criteria set forth in FAA Order 7400.2E. An examination of controlled airspace at Hays, KS also revealed discrepancies in the legal descriptions of the extensions to the two Class E airspace areas. The north extension of each area is redefined by the Hays collocated very high frequency omni-directional radio range and tactical air navigational aid (VORTAC) 360° radial versus the current 005° radial. The south extension of each area is redefined by the Hays VORTAC 162° radial versus the current 169° radial. This action brings the legal descriptions of the Hays, KS Class E airspace areas into compliance with FAA Order 7400.2E. The areas will be depicted on appropriate aeronautical charts. Class E airspace areas designated as surface areas are published in Paragraph 6002 of FAA Order 7400.9L, Airspace Designations and Reporting Points, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1 Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of the same FAA Order. The Class E airspace designations listed in this document will be published subsequently in the Order.

### The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

### Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA-2004-16989/Airspace Docket No. 04-ACE-7." The postcard will be date/time stamped and returned to the commenter.

### Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.



The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

#### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

#### Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

#### PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR 1959–1963, Comp., p. 389.

##### § 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9L, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

*Paragraph 6002 Class E Airspace Designated as Surface Areas.*

\* \* \* \* \*

#### ACE KS E2 Hays, KS

Hays Regional Airport, KS  
(Lat. 38°50'32" N., long. 99°16'23" W.)  
Hays VORTAC

(Lat. 38°50'52" N., long. 99°16'36" W.)  
Within a 4.2-mile radius of Hays Regional Airport and within 1.8 miles each side of the Hays VORTAC 360° radial extending from the 4.2-mile radius of the airport to 6 miles north of the VORTAC and within 1.8 miles each side of the Hays VORTAC 160° radial extending from the 4.2-mile radius of the airport to 6 miles south of the VORTAC.

\* \* \* \* \*

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

\* \* \* \* \*

#### ACE KS E5 Hays, KS

Hays Regional Airport, KS  
(Lat. 38°50'32" N., long. 99°16'23" W.)  
Hays VORTAC  
(Lat. 38°50'52" N., long. 99°16'36" W.)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of Hays Regional Airport and within 2.6 miles each side of the Hays VORTAC 360° radial extending from the 6.7-mile radius to 7.9 miles north of the airport and within 2.6 miles each side of the Hays VORTAC 162° radial extending from the 6.7-mile radius to 7.9 miles south of the airport.

\* \* \* \* \*

Issued in Kansas City, MO, on February 13, 2004.

**Paul J. Sheridan,**

*Acting Manager, Air Traffic Division, Central Region.*

[FR Doc. 04–5026 Filed 3–4–04; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Docket FAA 2003–16756; Airspace Docket 03–ACE–94]

#### Modification of Class E Airspace; Benton, KS

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Direct final rule; confirmation of effective date.

**SUMMARY:** This document confirms the effective date of the direct final rule which revises Class E airspace at Benton, KS.

**EFFECTIVE DATE:** 0901 UTC, April 15, 2004.

#### FOR FURTHER INFORMATION CONTACT:

Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

**SUPPLEMENTARY INFORMATION:** The FAA published this direct final rule with a request for comments in the **Federal Register** on January 12, 2004 (69 FR 1667). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on

April 15, 2004. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on February 24, 2004.

**Paul J. Sheridan,**

*Acting Manager, Air Traffic Division, Central Region.*

[FR Doc. 04–5036 Filed 3–4–04; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 882

#### Neurological Devices; Technical Amendment

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule; technical amendment.

**SUMMARY:** The Food and Drug Administration (FDA) is correcting a neurological device classification regulation. FDA is changing the name of the device from "cottonoid paddie" to "neurosurgical paddie." FDA is making this change because interested persons have advised FDA that the word "cottonoid" is a registered trademark and its use has created problems for competitors of the company that has registered the trademark. FDA is also removing the word "cotton" from the identification because devices of this type are not always made of cotton.

**DATES:** This rule is effective March 5, 2004.

#### FOR FURTHER INFORMATION CONTACT:

Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ–215), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–827–2974.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

In the **Federal Register** of September 4, 1979 (44 FR 51758), FDA published a final rule to classify the cottonoid paddie, a neurological device into class II (performance standards at that time). Only recently, several people have brought to the attention of FDA that the word, cottonoid, is a registered trademark, of Johnson & Johnson. These persons pointed out that the use of this classification name has created some problems for competitors of Johnson & Johnson. FDA is therefore changing the name of the device from cottonoid

paddie to neurosurgical paddie. FDA is also removing the word "cotton" from the identification of the device because many of the devices of this type are made of materials other than cotton.

## II. Environmental Impact

The agency has previously determined under 21 CFR 25.30(i) that this final rule is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement was required. The changes in these amendments do not alter this conclusion.

## III. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive order. In addition, the final rule is not a significant regulatory action as defined by the Executive order and so is not subject to review under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because this rule only changes the name of the device and does not change in any way how the device is regulated, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

## IV. Paperwork Reduction Act of 1995

FDA has determined that this final rule contains no additional collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

## V. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has

determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

### List of Subjects in 21 CFR Part 882

Medical devices.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 882 is amended as follows:

### PART 882—NEUROLOGICAL DEVICES

■ 1. The authority citation for 21 CFR part 882 continues to read as follows:

**Authority:** 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

■ 2. Section 882.4700 is amended by revising the section heading and paragraph (a) to read as follows:

#### § 882.4700 Neurosurgical paddie.

(a) A neurosurgical paddie is a pad used during surgery to protect nervous tissue, absorb fluids, or stop bleeding.

\* \* \* \* \*

Dated: February 25, 2004.

**Beverly Chernaik Rothstein,**

*Acting Deputy Director for Policy and Regulations, Center for Devices and Radiological Health.*

[FR Doc. 04–4887 Filed 3–4–04; 8:45 am]

**BILLING CODE 4160–01–S**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 69

[Region 2 Docket No. VI–5–265 D, FRL–7632–5]

### An Exemption From Requirements of the Clean Air Act for the Territory of United States Virgin Islands

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is announcing approval of a Petition, from the Governor of the Virgin Islands (US VI), which seeks an exemption of the Clean Air Act (CAA) section 165(a) requirement to obtain a

Prevention of Significant Deterioration (PSD) Permit to Construct prior to construction of a new gas turbine at the Virgin Islands Water and Power Authority (VIWAPA) St. Thomas facility. This exemption allows for construction, but not operation, of Unit 23 prior to issuance of a final PSD permit.

**EFFECTIVE DATE:** This rule will be effective March 5, 2004.

**ADDRESSES:** Copies of the Governor's Petition and submittals relied upon in the approval process are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, New York, New York 10007–1866, Attn: Umesh Dholakia.

Environmental Protection Agency, Region 2 Office, Caribbean Field Office, Centro Europa Building, Suite 417, 1492 Ponce de Leon Avenue, Stop 22, San Juan, Puerto Rico 00907–4127, Attn: John Aponte.

The U. S. Virgin Islands Department of Planning and Natural Resources (VIDPNR), Division of Environmental Protection, Cyril E. King Airport, Terminal Building, Second Floor, St. Thomas, U.S. Virgin Islands 00802, Attn: Leslie Leonard.

#### FOR FURTHER INFORMATION CONTACT:

Umesh Dholakia, Environmental Engineer, Air Programs Branch, Division of Environmental Protection and Planning, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–4023 or at [Dholakia.Umesh@epa.gov](mailto:Dholakia.Umesh@epa.gov).

**SUPPLEMENTARY INFORMATION:** The following table of contents describes the format for the Supplementary Information section:

- I. What Action Is EPA Taking Today?
- II. What Comments Did EPA Receive in Response to Its Proposal?
- III. What Is EPA's Conclusion?
- IV. Statutory and Executive Order Review

#### I. What Action Is EPA Taking Today?

EPA is approving a Petition from the U.S. VI Governor seeking an exemption of the CAA requirement to obtain a PSD Permit to construct prior to commencing construction of a new gas turbine at the VIWAPA St. Thomas facility.

Pursuant to section 325(a) of the CAA, on July 21, 2003, the Governor of the U.S. VI filed a Petition with the Administrator seeking an exemption from the CAA section 165(a) PSD requirement to obtain a PSD permit to construct prior to commencing construction. The Governor requested

the exemption on behalf of VIWAPA so that it can proceed, as quickly as possible, to construct Unit 23, a 36 megawatt (MW) gas turbine at its St. Thomas facility.

This exemption will allow for construction, not operation, prior to issuance of a final PSD permit, of Unit 23 at the VIWAPA St. Thomas facility.

## II. What Comments Did EPA Receive in Response to Its Proposal?

### A. Background Information

On December 31, 2003, EPA announced, in proposed and direct final rules published in the **Federal Register** (68 FR 75786 and 68 FR 75782, respectively), approval of a Petition from the U.S. VI Governor seeking an exemption of the CAA requirement to obtain a PSD Permit to construct prior to commencing construction of a new gas turbine at the VIWAPA St. Thomas facility. EPA had indicated in its December 31, 2003 direct final rule that if EPA received adverse comments, it would withdraw the direct final rule. Consequently, EPA informed the public, in a withdrawal notice published in the **Federal Register** (69 FR 9216) on February 27, 2004, that EPA received an adverse comment and that the direct final rule did not take effect. EPA did not receive any other comments. EPA is addressing the adverse comment in today's final rule based upon the proposed action published on December 31, 2003. For detailed information on this action, the reader is referred to the direct final rule referenced above.

### B. A Comment Received and EPA's Response

EPA received one adverse comment on its December 31, 2003 direct final rule to approve a Petition from the U.S. VI Governor seeking an exemption of the CAA requirement to obtain a PSD Permit to construct prior to commencing construction of a new gas turbine at the VIWAPA St. Thomas facility from a concerned citizen. That comment and EPA's response follows.

*Comments:* A concerned citizen commented that he objected to any exemption from providing clean air, and that EPA should mandate the highest standards for the clean air where people live and travel.

*Response:* In order to address this concern, EPA hereby clarifies the nature of this exemption under section 325(a) of the CAA. The CAA section 165(a) of the CAA requires that an owner/operator obtain a PSD permit to construct prior to commencing construction. The petitioner in this case is seeking an exemption commencing

construction of a new gas turbine. The petitioner is not seeking any exemption from obtaining a PSD permit and meeting all emission control and air quality related obligations under the CAA prior to beginning operation of this new turbine. The CAA, under section 325(a), specifically allows for exemptions from requirements of the CAA for sources in the Virgin Islands where it can be demonstrated that either financial or geographic conditions warrant such an exemption and no air quality violations would result from such an exemption.

EPA reviewed the petitioner's request and determined that granting this exemption will not result in any adverse impact on the air quality of the islands. The Virgin Islands will continue to meet the National Ambient Air Quality Standards. This action does not allow the petitioner to begin operation of the new turbine until a final PSD permit that meets all the CAA requirements is issued.

Thus, this exemption will not affect any emission or any air quality requirements. This new turbine will be held to the same emission limitations as a similar source built in another area which is attaining the NAAQS.

## III. What Is EPA's Conclusion

The VIWAPA St. Thomas facility is unable to interconnect with a larger power supply grid. Furthermore, the distance between St. Thomas and St. Croix prohibits the interconnection between the two VIWAPA plants. Thus, St. Thomas is serviced by a single power plant that is experiencing frequent power outages. Based on these factors, EPA has determined that the petition presents unique geographic circumstances that justify the waiver.

The EPA is approving the Petition for an exemption of the CAA section 165(a) requirement to obtain a PSD permit to construct prior to commencing construction of a new gas turbine, Unit 23, at the VIWAPA St. Thomas facility. This exemption will allow for the construction, but not the operation, of Unit 23 prior to issuance of a final PSD permit.

EPA is relying on the Governor's assertion that the construction and ultimate operation of Unit 23 should provide a reliable baseload which will give VIWAPA flexibility to meet electrical demand and that the additional capacity provided by this unit would be sufficient to allow for both planned and unplanned outages of generating units at the VIWAPA St. Thomas facility. EPA believes that by accelerating the time period by which this unit can be constructed, this

rulemaking may increase VIWAPA's potential to provide more reliable power in St. Thomas.

EPA has determined that today's rule falls under the "good cause" exemption at section 553(d)(3) of the Administrative Procedures Act (APA) which allows an agency to make a rule effective immediately, upon finding "good cause," thereby avoiding the 30-day delayed effective date otherwise provided for in the APA. EPA has concluded that to delay the effectiveness of this rule for 30 days might adversely affect resolving a pending power crisis impacted by severe geographic constraints and that the entities that will be directly affected by this exemption have had ample notice of EPA's action. Therefore, EPA is making this rule effective immediately. This rule will be effective March 5, 2004.

## IV. Statutory and Executive Order Review

### A. Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

### B. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, OMB must approve all "collections of information" by EPA. The Act defines "collection of information" as a requirement for "answers to \* \* \* identical reporting or recordkeeping requirements imposed on ten or more persons \* \* \*" 44 U.S.C. 3502(3)(A). Because the exemption only applies to one company, the Paperwork Reduction Act does not apply.

### C. Regulatory Flexibility Analysis

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business that is primarily engaged in the generation and distribution of electricity as defined by NAIC code 221112 with production less than four million megawatt hours (based on Small Business Administration size standards); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not

dominant in its field. After considering the economic impacts of today's final rule on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any requirements on small entities. The exemption applies to only one source and does not create any new requirements.

#### *D. Unfunded Mandates Reform Act*

Under sections 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action proposes to approve an exemption under Federal law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

#### *E. Executive Order 13132, Federalism*

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism

implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves an exemption from a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

#### *F. Executive Order 13175, Coordination With Indian Tribal Governments*

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This proposed rule does not have tribal implications, as specified in Executive Order 13175.

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Thus, Executive Order 13175 does not apply to this rule.

#### *G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks*

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of

the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

#### *H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use*

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

#### *I. National Technology Transfer and Advancement Act*

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical. The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

#### *J. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) Rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. section 804(3). EPA is not required to submit a rule report regarding this action under section 801 because this is a rule of particular applicability in that it exempts only one source from obtaining a PSD permit to construct.

*K. Other*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 4, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 69**

Environmental protection, Air pollution control.

Dated: February 27, 2004.

**Michael O. Leavitt,**  
Administrator.

■ Part 69 of chapter I, title 40 of the Code of Federal Regulations is amended to read as follows:

**PART 69—[AMENDED]**

■ 1. The authority citation for part 69 continues to read as follows:

**Authority:** 42 U.S.C. 7545(c), (g), and (i), and 7625–1.

■ 2. Section 69.41 is amended by adding paragraph (h) to read as follows:

**§ 69.41 New exemptions.**

\* \* \* \* \*

(h) Pursuant to section 325(a) of the Clean Air Act (CAA) and a petition submitted by the Governor of United States Virgin Islands on July 21, 2003, (“2003 Petition”), the Administrator of EPA conditionally exempts Virgin Islands Water and Power Authority (“VIWAPA”) from certain CAA requirements.

(1) A waiver of the requirement to obtain a PSD permit prior to construction is granted for the electric generating unit identified in the 2003 Petition as Unit 23, St. Krum Bay plant in St. Thomas with the following condition:

(i) Unit 23 shall not operate until a final PSD permit is received by VIWAPA for this unit;

(ii) Unit 23 shall not operate until it complies with all requirements of its PSD permit, including, if necessary, retrofitting with BACT;

(iii) If Unit 23 operates either prior to the issuance of a final PSD permit or without BACT equipment, Unit 23 shall be deemed in violation of this waiver and the CAA beginning on the date of

commencement of construction of the unit.

(2) [Reserved]

[FR Doc. 04–4987 Filed 3–4–04; 8:45 am]

BILLING CODE 6560–50–P

**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****50 CFR Part 17**

RIN 1018–AI28

**Endangered and Threatened Wildlife and Plants; Listing the San Miguel Island Fox, Santa Rosa Island Fox, Santa Cruz Island Fox, and Santa Catalina Island Fox as Endangered**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), determine endangered status pursuant to the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), for four subspecies of island fox (*Urocyon littoralis*): San Miguel Island fox (*U. l. littoralis*), Santa Rosa Island fox (*U. l. santarosae*), Santa Cruz Island fox (*U. l. santacruzae*), and Santa Catalina Island fox (*U. l. catalinae*). This final rule extends the Federal protection and recovery provisions of the Act to these subspecies.

**DATES:** This final rule is effective April 5, 2004.

**ADDRESSES:** The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, CA 93003.

**FOR FURTHER INFORMATION CONTACT:** Field Supervisor, U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office, at the address above (telephone 805/644–1766; facsimile 805/644–3958).

**SUPPLEMENTARY INFORMATION:****Background**

The island fox was first described as *Vulpes littoralis* by Baird in 1857 from the type locality of San Miguel Island, Santa Barbara County, California. Merriam (1888, in Hall and Kelson 1959) reclassified the island fox into the genus *Urocyon* and later described island foxes from Santa Catalina, San Clemente, and Santa Cruz Islands as three separate taxa (*U. catalinae*, *U. clementae*, and *U. littoralis santacruzae*) (Merriam 1903). Grinnell *et al.* (1937) revised Merriam’s classification, placing

foxes from all islands under the species *U. littoralis* and assigning each island population a subspecific designation (*U. l. catalinae* on Santa Catalina Island, *U. l. clementae* on San Clemente Island, *U. l. dickeyi* on San Nicolas Island, *U. l. littoralis* on San Miguel Island, *U. l. santacruzae* on Santa Cruz Island, and *U. l. santarosae* on Santa Rosa Island). Recent morphological and genetic studies support the division of the *U. littoralis* complex into six subspecies that are each limited in range to a single island (Gilbert *et al.* 1990; Wayne *et al.* 1991; Collins 1991a, 1993; Goldstein *et al.* 1999). Each subspecies is reproductively isolated from the others by a minimum of 5 kilometers (3 miles) of ocean waters. The island fox is closely related to the mainland gray fox, *U. cinereoargenteus*, but is smaller in size and darker in coloration (Moore and Collins 1995).

The island fox is a very small canid, weighing approximately 3 to 6 pounds (1.4 to 2.7 kilograms) and standing approximately 1 foot (0.3 meter) tall. The tail is conspicuously short. Dorsal coloration is grayish-white and black. The base of the ears and sides of the neck and limbs are cinnamon-rufous in color, and the underbelly is a dull white. Island foxes display sexual size dimorphism (males being larger and heavier than females) (Moore and Collins 1995).

Island foxes inhabit the six largest islands (San Miguel, Santa Rosa, Santa Cruz, San Nicolas, Santa Catalina, and San Clemente Islands) off the coast of southern California. Genetic evidence suggests that all island foxes are descended from one colonization event (Gilbert *et al.* 1990), possibly from chance overwater dispersal during which foxes rafted on floating debris (Moore and Collins 1995). Fossil evidence indicates that island foxes inhabited the northern Channel Islands (San Miguel, Santa Rosa, and Santa Cruz) between 10,000 to 16,000 years ago (Orr 1968). However, island foxes are thought to have existed on the northern Channel Islands even before that time, during a period when Santa Cruz, Santa Rosa, and San Miguel were one land mass referred to as “Santarosae,” last known to have been united 18,000 years ago (Johnson 1978, 1983). The island fox was thought to have reached the southern Channel Islands (San Nicolas, San Clemente, and Santa Catalina) much more recently (2,200 to 3,800 years ago), most likely introduced to these islands by Native Americans as pets or semidomesticates (Collins 1991a, b). However, island fox remains recently recovered from San Nicolas Island suggest this introduction

was earlier, approximately 5,200 years ago (Vellanoweth 1998).

Genetic evidence confirms the pattern of dispersal suggested by archeological and geological findings (Gilbert *et al.* 1990). The pattern of genetic relatedness supports the geological evidence of the sequence of isolation for each island, and each population, as rising sea levels separated Santarosae into the northern Channel Islands. Santa Cruz separated from the other northern Channel Islands first, about 11,500 years ago, followed by the separation of San Miguel and Santa Rosa about 9,500 years ago.

Together with the fossil record, genetic evidence indicates that San Clemente was the first southern Channel Island colonized, probably by immigrants from San Miguel. Dispersal then occurred from San Clemente to San Nicolas and then Santa Catalina (Gilbert *et al.* 1990).

Island forms of species generally have less genetic variability than their mainland counterparts (Gill 1980), and island foxes are no exception. Mainland gray foxes are more variable both morphologically and genetically than island foxes (Wayne *et al.* 1991; Goldstein *et al.* 1999). The smaller the island size the lower the island fox population size and genetic variability seems to be. The smallest island fox populations, San Miguel and San Nicolas, show the least genetic variability, with San Nicolas having virtually no genetic variability, which is highly unusual among mammal populations. This lack of variability likely occurred as a result of a past population bottleneck (Gilbert *et al.* 1990; Goldstein *et al.* 1999); such a bottleneck occurred on San Nicolas Island in the mid-1970s (Laughrin 1980).

The diminutive island fox is the largest native carnivore on the Channel Islands. The island fox is a habitat generalist, occurring in valley and foothill grasslands, southern coastal dunes, coastal bluff, coastal sage scrub, maritime cactus scrub, island chaparral, southern coastal oak woodland, southern riparian woodland, Bishop (*Pinus muricata*) and Torrey pine (*Pinus torreyana*) forests, and coastal marsh habitats. Although foxes can be found in a wide variety of habitats on the islands, they prefer areas of diverse topography and vegetation (Von Bloeker 1967; Laughrin 1977; Moore and Collins 1995). Laughrin (1973, 1980) found woodland habitats to support higher densities of island foxes due to increased food availability, while Crooks and Van Vuren (1995) found island foxes to prefer fennel grasslands and avoid ravines and scrub oak (*Quercus* spp.) patches.

Island foxes are omnivores, taking a wide variety of seasonally available plants and animals (Collins and Laughrin 1979; Collins 1980; Kovach and Dow 1981; Moore and Collins 1995; Crowell 2001). Island foxes forage opportunistically on any food items encountered within their home range. Diet is determined largely by availability, which varies by habitat and island, as well on a seasonal and annual basis. Island foxes prey on native deer mice (*Peromyscus maniculatus*) and harvest mice (*Reithrodontomys megalotis catalinae*), as well as on introduced house mice (*Mus musculus*) and rats (*Rattus rattus* and *R. norvegicus*). Small mammals may be especially important prey during the breeding season, because they are large, energy-rich food items that adult foxes can bring back to their growing pups (Garcelon *et al.* 1999). In addition to small mammals, island foxes feed on ground-nesting birds such as horned larks (*Eremophila alpestris*), Catalina quail (*Callipepla californica catalinensis*), and western meadowlarks (*Sturnella neglecta*), and a wide variety of insect prey (Moore and Collins 1995). At certain times of the year, foxes feed heavily on orthopterans (e.g., grasshoppers and crickets) (Crooks and Van Vuren 1995), especially Jerusalem crickets (*Stenopelmatus fuscus*). Less common in the diet are amphibians, reptiles, and carrion of marine mammals (Collins and Laughrin 1979). Island foxes feed on a wide variety of native plants, including the fruits of manzanita (*Arctostaphylos* spp.), summer holly (*Comarostaphylis* spp.), toyon (*Heteromeles arbutifolia*), cactus (*Opuntia* spp.), island cherry (*Prunus ilicifolia*), sumac (*Rhus* spp.), rose (*Rosa* spp.), nightshade (*Solanum* spp.), and huckleberry (*Vaccinium* spp.) (Moore and Collins 1995). Fruiting shrubs do not occur on San Miguel Island, where island foxes rely more on the fruits of the lowgrowing sea-fig, *Carpobrotus chilensis*.

The island fox is a docile canid, exhibiting little fear of humans in many instances. Although primarily nocturnal, the island fox is more diurnal than the mainland gray fox (Collins and Laughrin 1979; Fausett 1993). Their more diurnal activity is thought to be a result of both the historical absence of large predators and freedom from human harassment on the islands (Laughrin 1977).

Mated island foxes maintain territories that are separate from the territories of other pairs (Crooks and Van Vuren 1996; Roemer *et al.* 2001a). Island fox home range size varies with sex, season, population density,

landscape features, and habitat type (Laughrin 1977; Crooks and Van Vuren 1996; Thompson *et al.* 1998; Roemer *et al.* 2001a). Estimates of territory size range from 59 acres (ac) (24 hectares (ha)) in mixed habitat (Crooks and Van Vuren 1996) and 214 ac (87 ha) in grassland habitat (Roemer 1999) on Santa Cruz Island, to 190 ac (77 ha) in canyons on San Clemente Island (Thompson *et al.* 1998). Island fox territory configuration changes after the death and replacement of paired male foxes, but not after the death and replacement of paired females or juveniles, indicating that adult males are involved in territory formation and maintenance (Roemer *et al.* 2001a).

Although island foxes appear monogamous, copulations with individuals other than the mate are common and often result in offspring. Courtship activities occur from late January to early March; genetic evidence suggests that inbreeding avoidance occurs (Roemer *et al.* 2001a). Recent endocrine assays on fecal samples from San Miguel Island indicate that, unlike all other canids studied to date, island foxes are induced rather than spontaneous ovulators (Bauman *et al.* 2001), which means that female island foxes do not enter estrous unless males are present. Young are born from late April through May after a gestation period of approximately 50 days. Island foxes give birth to their young in simple dens, which are usually not excavated by the foxes themselves (Moore and Collins 1995). Rather, any available sheltered site (e.g., brush pile, rock crevice, or hollow stump) is used (Laughrin 1977). Litter size ranges from one to five pups (Moore and Collins 1995). Laughrin (1977) found an average litter of 2.17 for 24 dens on Santa Cruz Island; this estimate likely reflected the number of pups weaned rather than born. The average size of 3.5 litters born in captivity since 1999 is 2.3 (Coonan *et al.* in prep.). Both island fox parents care for the young (Garcelon *et al.* 1999). By 2 months of age, young foxes spend most of the day outside the den and will remain with their parents throughout the summer. Some pups disperse from their birth territories by winter, although others may stay on their natal territories into their second year (Coonan 2003a). Island foxes can mate at the end of their first year (Collins and Laughrin 1979), although most breeding involves older animals. Coonan *et al.* (1998) found that only 16 percent of females under the age of 2 bred over a 5-year period, in contrast to 60 percent of older females.

Due to the low reproductive output of island foxes, survival of adults is the

most important factor influencing population growth rate (Roemer 1999; Roemer *et al.* 2001b, d). Compared with the gray fox, island fox populations are skewed toward older adults (Laughrin 1980; Garcelon 1988). Adult island foxes live an average of 4 to 6 years (Moore and Collins 1995), although this may be an underestimate (Coonan *et al.* 1998). Island foxes may live 8 to 10 years in captivity or in the wild in the absence of catastrophic mortality forces (Tim Coonan, National Park Service, in litt. 2002).

In the 1970s, island foxes were found at higher densities than any other canid species, likely due to the lack of competition and predation compared with the island foxes' mainland canid counterparts (Laughrin 1980). At the time of Laughrin's early studies, island fox populations were stable on all islands except Santa Catalina (Laughrin 1973). Pre-decline trapping on Santa Cruz Island in 1993 and 1994 reconfirmed that island foxes existed at high densities, with an average of 21.3 foxes per mi<sup>2</sup> (8.2 foxes per km<sup>2</sup>) in 1994 (Roemer *et al.* 1994).

San Miguel, Santa Rosa, Santa Cruz, and Santa Catalina island foxes have experienced precipitous declines in the last 8 years (Coonan *et al.* 1998, 2000; Roemer 1999; Timm *et al.* 2000; Roemer *et al.* 2001b). The island fox population on San Nicolas Island has remained stable and the population on San Clemente appears to have experienced a gradual decline. Total island fox numbers rangewide have fallen from approximately 6,000 individuals in 1994 (Roemer *et al.* 1994) to fewer than 1,660 individuals in 2003 (Coonan 2003b). By 2001, island fox populations on San Miguel and Santa Cruz Islands had declined by an estimated 80 to 90 percent and were found to have a 50 percent chance of extinction over the next 5 to 10 years (Roemer 1999; Roemer *et al.* 2001b). During the period of decline, island fox population monitoring was not conducted on Santa Rosa Island; however, anecdotal observations and recent trapping efforts showed that a similar decline occurred for this subspecies as well (Roemer 1999; Coonan 2003a). Island fox populations on the northern Channel Islands are considered critically endangered and in need of immediate conservation action (Coonan *et al.* 1998; Roemer 1999; Roemer *et al.* 2001c). On Santa Catalina, island fox populations all but disappeared from the larger eastern portion of the island. This decline is attributed to a canine distemper outbreak that swept through the population in 1999 (Timm *et al.* 2000).

San Clemente and San Nicolas Islands have island fox populations estimated at approximately 595 and 614 individuals, respectively (D. Garcelon, unpublished data; Schmidt and Garcelon 2003). San Clemente Island has not experienced the sharp declines seen on other islands; however, 13 years of trapping data indicate that island fox densities have slowly declined since the early 1990s (Garcelon 1999; D. Garcelon, unpublished data). Populations of the San Nicolas Island fox appear to be stable. However, its small population size (Roemer *et al.* 1994), insular nature, lack of resistance to canine distemper and other diseases (Garcelon *et al.* 1992), high densities (Schmidt and Garcelon 2003), and low genetic variability (Wayne *et al.* 1991) increase the vulnerability of this subspecies (Roemer 1999). Protective measures have been put in place on these islands, such as reducing speed limits, educating island inhabitants and visitors, implementing a wildfire management plan, managing feral cat populations, administering canine distemper vaccinations, and removing all feral ungulates, to prevent further decline of these two subspecies. The statuses of these subspecies are discussed further in Issue 16 under our responses to public comments.

#### *San Miguel Island Fox (Urocyon littoralis littoralis)*

San Miguel Island is owned by the Department of the Navy but is managed by the National Park Service as part of the Channel Islands National Park through a series of memoranda of understanding between these agencies. The first quantitative surveys for island foxes on San Miguel Island were conducted by Laughrin in the early 1970s (Laughrin 1973). Trap efficiency was high (43 percent), and Laughrin concluded that island fox populations were stable at 7 foxes per square mile (mi<sup>2</sup>) (2.7 foxes per square kilometer (km<sup>2</sup>)), although this may be an underestimate. In the late 1970s, the island foxes on San Miguel had an average density of 12 foxes per mi<sup>2</sup> (4.6 foxes per km<sup>2</sup>), for a total estimated population of 151 to 498 individuals (Collins and Laughrin 1979). Island foxes on San Miguel Island were not surveyed again until 1993, when the NPS instituted a long-term population study, which recorded an average density of 20 foxes per mi<sup>2</sup> (7.7 foxes per km<sup>2</sup>) on two trapping grids and estimated the total population at more than 300 foxes (Roemer *et al.* 1994; Coonan *et al.* 1998). A third trapping grid was added the following year, and yielded island fox densities higher than

previously recorded (41 foxes per mi<sup>2</sup> (15.8 foxes per km<sup>2</sup>) in one study area), resulting in an island-wide estimate of 450 adults (Coonan *et al.* 1998). Annual population monitoring using capture-mark-recapture techniques documented a substantial decline in island fox populations on San Miguel Island between 1994 and 1999 (Coonan *et al.* 1998; Coonan *et al.* in review). During this time period, island fox populations dropped from an estimated 450 adults in 1994 (Coonan *et al.* 1998) to 15 foxes in 1999 (T. Coonan, unpublished data) as a result of predation by golden eagles.

In 1999, NPS captured 14 (4 males and 10 females) of the 15 remaining foxes from San Miguel Island to protect the subspecies from further losses from predation by golden eagles and to initiate a captive propagation program. The remaining island fox, a lone female, evaded capture efforts until September 2003, when she was captured and brought into captivity. Four years' captive breeding has increased the captive San Miguel Island fox population to 38 individuals.

Island foxes held in captivity are likely to be exposed to increased parasite loads due to artificial densities and unnaturally low mobility. On San Miguel Island, captive island foxes have been found to have high parasite loads of *Angiocaulus* spp., *Spirocerca* spp., and *Uncinaria* spp. (L. Munson, unpublished data; Sharon Patton, University of Tennessee, pers. comm. 2003). These parasites, thought to have had minor effects on the population in the past (see Coonan *et al.*, in review), may have significant effects on individual fox health due to the facilitation of their spread and density by the captive breeding situation. For example, fox handlers have reported high incidence of rectal bleeding in the captive San Miguel population, likely due to *Uncinaria* (a type of hookworm). Hookworms feed on the inner lining of the small intestine and cause loss of blood or hemorrhaging to the host, sometimes to the point of severe anemia and death. The NPS is working to address this threat by developing a treatment process for hookworm in coordination with the veterinary team of the Island Fox Conservation Working Group. Captive breeding programs to facilitate recovery are planned to continue for these four island fox subspecies. Therefore, exposure to increased parasitic loads will continue to be a threat.

Until September 2001, all captive San Miguel Island foxes were held in one breeding facility, putting the subspecies in danger of extinction due to a catastrophic event such as wildfire or



disease outbreak. The NPS moved half the captive foxes into a second breeding facility on San Miguel Island in October 2001 to minimize this risk (Coonan and Rutz 2002).

*Santa Rosa Island Fox (Urocyon littoralis santarosae)*

Santa Rosa Island is owned and managed by the NPS. The earliest island fox trapping study from Santa Rosa reported a trapping efficiency of 50 percent and a density of 11 foxes per mi<sup>2</sup> (4.2 foxes per km<sup>2</sup>) (Laughrin 1973). Few population data have been collected on Santa Rosa Island foxes since Laughrin's studies. Although population monitoring was not conducted on Santa Rosa Island during the period of decline, trapping data collected in 1998 and 2000, as well as anecdotal evidence, suggested that Santa Rosa experienced a decline similar to those on Santa Cruz and San Miguel Islands (Roemer 1999; Roemer *et al.* 2001b). During 132 trap nights in 1998, trap success was 4.8 percent, and only 9 individuals were captured (Roemer 1999). Anecdotal sightings by park and ranch staff in the late 1990s became much less frequent than in previous years (Coonan 2003a).

Believing that fewer than 100 island foxes remained on Santa Rosa Island (T. Coonan, pers. comm. 1999), the NPS captured 14 adult foxes (5 males and 9 females) to initiate captive breeding in March 2000. The last known fox in the wild on Santa Rosa Island was brought into captivity in March 2001 (Coonan and Rutz 2002). Three years' captive breeding has increased the captive population to 56 (Coonan 2003b). As with San Miguel Island, approximately half the captive foxes were moved to a second facility in October 2001 (Coonan and Rutz 2002).

Deer (*Odocoileus hemionus*) and elk (*Cervus elaphus*) are present on Santa Rosa Island and assist in supporting breeding golden eagles, the main predator of island fox. Deer numbers in 2002 fluctuated between 424 and 686 deer (Schreiner *et al.* 2003), while approximately 601 elk remain on the island (Nathan Vail, *in litt.* 2003). Numbers of deer and elk are presently at their lowest numbers since the herds were established, as the result of a negotiated settlement agreement between the NPS and the commercial hunting operation managing the herds. The presence of these ungulates on the island likely facilitates the presence of golden eagles in two ways: (1) Deer fawns provide live prey for golden eagles as evidenced by prey remains found in nests (Coonan 2003a); and (2) carcasses of deer and elk from an annual

hunt and subsequent cull provide golden eagles with a food source at a time of year where food resources are usually depleted. Through a settlement between the special use permittee and the NPS, deer and elk will be removed from the island by 2011, with populations slated for decrease beginning in 2008.

*Santa Cruz Island Fox (Urocyon littoralis santacruzae)*

The majority (75 percent) of Santa Cruz Island is owned by The Nature Conservancy, with the remaining 25 percent owned by NPS. Santa Cruz Island is the largest of the Channel Islands and has supported the highest known densities of island fox in the past (Laughrin 1973). Laughrin (1971) estimated the island fox population of Santa Cruz Island to be approximately 3,000 individuals. Average density between 1973 and 1977 was 20.4 foxes per mi<sup>2</sup> (7.9 foxes per km<sup>2</sup>) (Laughrin 1980). Following Laughrin's studies, island fox populations on Santa Cruz Island were not surveyed again until 1993, when the average density was 21.2 foxes per mi<sup>2</sup> (8.2 foxes per km<sup>2</sup>) (Roemer *et al.* 1994). Since that time, the population has decreased from an estimated 1,312 in 1993 to 133 individuals in 1999 (Roemer 1999; Roemer *et al.* 1994, 2001b). In 1998, trapping efficiency was low (2.9 percent), and island fox density ranged from 0.0 to 6.2 foxes per mi<sup>2</sup> (0.0 to 2.4 foxes per km<sup>2</sup>), the lowest ever reported from Santa Cruz Island (Roemer 1999).

Population monitoring efforts in 2001 yielded captures of 75 individual foxes. Of these, 27 were outfitted with radio collars. The highest numbers of foxes were captured in the areas of relatively high cover. Five of the 27 radio-collared foxes died during 2001; their deaths were attributed to predation by golden eagles (David Garcelon, Institute for Wildlife Studies, pers. comm. 2001a). The Island Fox Conservation Working Group, a team of experts convened by the NPS to recommend appropriate recovery actions for the island fox, found that "the existence of one pair of golden eagles on the island as of October 1, 2001, will warrant bringing foxes into captivity as the necessary conservative step in preserving the Santa Cruz Island fox population (Coonan 2001)." Intensive trapping efforts to capture and relocate the remaining golden eagles in the spring and summer of 2001 resulted in three captures; however, four eagles remained on the island (B. Latta, pers. comm. 2001). Thus, the NPS and The Nature Conservancy (TNC) initiated captive breeding of island foxes on Santa Cruz

Island in early 2002 (Coonan and Rutz 2003).

During 2002, 18 island foxes on Santa Cruz Island were captured and brought into captivity. One of these foxes gave birth to 5 pups, 3 of which were released back into the wild, bringing the total captive population to 20 by December 2002 (Coonan and Rutz 2003). An additional 10 pups born in 2003 brought the total captive population to 30 individuals.

Islandwide transect trapping in 2002 revealed that a minimum of 68 foxes were alive in the wild on Santa Cruz Island (D. Garcelon, unpublished data). Additional island foxes are expected to be present on the island, but the total number of island foxes in the wild is likely fewer than 100 (Schmidt and Garcelon 2003). Since December 2000, the Institute for Wildlife Studies has radio-tracked 53 individual foxes. Twenty of these foxes have died; 16 of the 20 mortalities were attributed to golden eagle predation based on physical evidence at the carcass recovery site (Institute for Wildlife Studies, unpublished data).

Annual survivorship of wild island foxes on Santa Cruz Island, as determined by ongoing radiotelemetry, was 61 percent in 2001 and 70 percent in 2002. Golden eagle trapping appears to have improved annual survivorship of island foxes, as the 2001 and 2002 survivorship is significantly higher than the 39 percent survivorship recorded during the island fox population decline. However, an island fox population model indicates that survivorship needs to be at least 80 percent in order for the populations to stabilize or increase (Roemer *et al.* in prep.).

Santa Cruz Island is currently occupied by a large feral pig (*Sus scrofa*) population (estimated at approximately 3,000 to 5,000 individuals), which facilitates the colonization of the island by golden eagles. TNC and the NPS are planning to begin an islandwide pig eradication program in spring 2004, which will take years to complete (NPS 2002).

*Santa Catalina Island Fox (Urocyon littoralis catalinae)*

Twelve percent of Catalina Island is in private ownership, while the remaining 88 percent is owned by the Catalina Island Conservancy. Santa Catalina Island has the largest human population, a large population of domestic dogs, and the highest degree of human activity and accessibility of the Channel Islands. Island fox numbers on Santa Catalina Island have fluctuated widely over the past 30 years. In



Laughrin's early 1970s studies, only 2 island foxes were trapped on Santa Catalina Island for a trap efficiency of 6 percent and an average estimated density of 0.3 fox per mi<sup>2</sup> (0.1 fox per km<sup>2</sup>) (Laughrin 1973). This density was 37 percent lower than any other island during this study. The reason for past low island fox numbers on Santa Catalina Island is unknown; the available food and habitats are comparable to those on the other islands. Island fox numbers on Santa Catalina Island increased slightly between 1975 and 1977, with average estimated densities of 0.77 fox per mi<sup>2</sup> (0.29 fox per km<sup>2</sup>) (Propst 1975) and 0.8 fox per mi<sup>2</sup> (0.30 fox per km<sup>2</sup>) (Laughrin 1980). During 1989 and 1990, average density estimates increased, ranging from 6.7 to 33.1 foxes per mi<sup>2</sup> (2.6 to 12.8 foxes per km<sup>2</sup>) (Garcelon *et al.* 1991). The Santa Catalina Island fox population increased to an estimated 1,342 foxes by 1994 (Roemer *et al.* 1994).

In 1999, the Santa Catalina Island fox population experienced a dramatic decline attributed to canine distemper, presumably introduced by domestic dogs, in the eastern portion of the island (Timm *et al.* 2000). Santa Catalina Island is separated into a large eastern side of 40,000 ac (16,190 ha) and a small western side of 8,000 ac (3,240 ha) by a narrow isthmus, which has apparently served as a barrier to the canine distemper virus. Anecdotal accounts of fox absence in the summer of 1999 resulted in renewed trapping efforts to ascertain the status of the species, and investigation of a potential disease-related decline. Two live foxes and one deceased fox recovered from the eastern portion of the island tested positive for canine distemper virus or had high antibody titers (a measure of concentration), constituting the first positive record of canine distemper in island foxes (Timm *et al.* 2000). Previous studies had found no evidence of canine distemper in Santa Catalina Island foxes (Garcelon *et al.* 1992). A trapping effort conducted during this time period resulted in a minimum population estimate of only 100 foxes for the year 2000 (Kohlmann *et al.* 2003), compared to an islandwide population estimate of 1,342 foxes reported in 1994 (Roemer *et al.* 1994).

Island fox trapping efforts during 2000 and 2001 resulted in capture of 137 island foxes on the western end and 37 on the eastern portion of Santa Catalina Island, and a conservative population estimate of 225 foxes islandwide (Kohlmann *et al.* 2003; D. Garcelon, unpublished data). Monitoring conducted in 2001 and 2002

resulted in capture of 161 individuals (67 at the east end, 94 at the west end) and a conservative population estimate of 215 foxes islandwide (119 on the west end, and 96 on the east end) (Kohlmann *et al.* 2003).

A captive propagation program for the Santa Catalina Island fox was initiated in 2001. The Institute for Wildlife Studies captured 16 adults (10 females and 6 males) between February and mid-March 2001 as the founder population for the captive breeding program. The pregnant females from the founder group gave birth to a total of 18 pups. Twelve of these pups died within 7 days of birth, likely due to stress to the females from capture during late pregnancy. The six remaining pups were released onto the east end of the island in the fall of 2001. Eight pups were released as part of this program in 2002, and 15 were released in 2003. During 2002, 10 additional foxes were brought into captivity from the west end to replace captive breeding stock. Early results of the captive breeding-release program are promising. Of the 14 pups released in 2001 and 2002, 11 are known to be alive and at least 3 captive reared foxes are reproducing (Institute for Wildlife Studies, unpublished data).

In addition to the captive breeding program, the Santa Catalina Conservancy and the Institute for Wildlife Studies initiated a translocation program in 2001 to re-establish island foxes on the east side of the island. Seven of 10 juvenile island foxes were relocated from the west end to the east end in 2001, and all of the 12 foxes that were relocated in 2002 remain in the population (Institute for Wildlife Studies, unpublished data). The translocation effort has been discontinued to avoid adverse effects to the west end population, but appears to have been successful as a population augmentation mechanism for the east end. At least 6 of the translocated foxes are known to be reproducing on the east end, and at least 4 pups have been produced in the wild by translocated animals.

#### Previous Federal Action

We published an updated candidate Notice of Review (NOR) for animals on December 30, 1982 (47 FR 58454). This notice included all six subspecies of island fox in a list of category 2 candidate species. We maintained all six subspecies of island fox as category 2 candidates in subsequent notices: September 18, 1985 (50 FR 37958), January 6, 1989 (54 FR 554), November 21, 1991 (56 FR 58804) and November 15, 1994 (59 FR 58982). As announced in a notice published in the February

28, 1996, **Federal Register** (61 FR 7596), we discontinued the designation of category 2 candidates. Thus, all six subspecies of island fox were not included in the 1996 and subsequent NORs until our October 30, 2001 (66 FR 54808), NOR in which the San Miguel, Santa Rosa, Santa Cruz, and Santa Catalina Island foxes were included as candidate species. Candidate species are those species being considered for listing by the Secretary but which are not yet the subject of a proposed listing rule (50 CFR 424.02(b)).

On June 1, 2000, we received a petition from the Center for Biological Diversity (Center) in Tucson, Arizona, and the Institute for Wildlife Studies in Arcata, California, requesting that we add four subspecies of island fox, the San Miguel Island fox, Santa Rosa Island fox, Santa Cruz Island fox, and Santa Catalina Island fox, to the list of endangered species pursuant to the Act. Due to a lack of funding, we initially did not issue a 90-day finding in response to the petition. In response to our lack of action on the petition, the Center sent us a 60-day notice of intent to sue on December 4, 2000. In the October 30, 2001, NOR, however, the island foxes were included as candidate species for which listing was warranted but precluded by higher priority listing actions (66 FR 54808); as noted in the NOR, the Service considered that the island foxes, and all other candidate species, as having been subject to a positive 90-day finding and a warranted-but-precluded 12-month finding (66 FR 54814). We proposed to list the four subspecies of island fox on December 10, 2001 (66 FR 63654). The proposed rule satisfied a measure in the settlement agreement with the Center (*Center for Biological Diversity, et al. v. Norton*, Civ. No. 01-2063 (JR) (D.D.C.)), entered by the Court on October 2, 2001.

On April 22, 2003, the Center filed suit against the Service for failure to finalize the listing and for failure to publish a final determination regarding critical habitat. (*Center for Biological Diversity v. Williams, et al.* No. CV-03-2729 AHM). In a settlement of that lawsuit, the Service agreed to submit the final listing determination to the **Federal Register** on or by March 1, 2004, and if prudent, submit a proposed rule to designate critical habitat to the **Federal Register** on or by October 1, 2004, and a final determination regarding critical habitat on or by November 1, 2005.

#### Summary of Comments and Responses

In the December 10, 2001, proposed rule (66 FR 63654), we requested all interested parties to submit factual

reports or information that might contribute to development of a final rule. A 60-day comment period closed on February 8, 2002. We contacted appropriate Federal agencies, State agencies, county and city governments, scientific organizations, and other interested parties and requested comments, and notified affected landowners of the proposed listing. We published public notices of the proposed rule, which invited general public comment, in the Santa Barbara News Press and Ventura County Star on December 15, 2001. We requested peer review in compliance with our policy, published in the **Federal Register** on July 1, 1994 (59 FR 34270). We did not receive any requests for a public hearing, and no public meeting was held.

During the public comment period, we received written comments from 11 individuals, businesses, and organizations. In all, one commenter opposed the listing and two supported continued protection of the subspecies proposed for listing. The remaining eight commenters stated neither opposition nor support for the ruling, but provided additional information on the causes of decline and threats to the island fox. Issues raised by the commenters, and our response to each, are summarized below.

**Issue 1:** Several commenters stated that the rule lists the introduction of non-native herbivores as the primary cause of the fox decline. One commenter further pointed out that, if non-native herbivores were the cause of decline, the fox population on Santa Rosa Island should have been decimated in the 1870s, when more than 100,000 head of sheep (*Ovis aries*) were present. Several commenters noted that foxes flourished for over 130 years with extensive grazing by cattle (*Bos taurus*) and sheep, and for close to 70 years with the added presence of pigs, elk, and deer.

**Our response:** Although the degradation of habitat that occurred due to the introduction of non-native herbivores is the first threat presented in the rule (under Factor A), this threat was not identified as the primary cause of the island fox decline. The Service concluded that the primary cause of decline for island foxes is from predation by golden eagles on Santa Cruz, San Miguel, and Santa Rosa Islands and canine distemper on Santa Catalina Island. However, the introduction of non-native mammals to the northern Channel Islands has facilitated declines of island foxes in two ways: (1) By type-converting woodland and scrub habitats to open

grasslands comprised of non-native annual grasses, it greatly reduces the amount of cover available to island foxes and (2) feral pigs and deer provide an unnatural prey base for golden eagles, which has facilitated the colonization of the northern Channel Islands by golden eagles. Removing non-native animals is essential to break the link that attracts golden eagles to the northern islands, where they also prey on island foxes.

**Issue 2:** Several commenters pointed out that the rapid decline in fox populations over the last 6 years occurred concurrently with the removal of non-native species, including pigs and cattle, and the reduction of deer and elk. The commenters proposed that the removal of non-native species caused the decline of the island foxes.

**Our response:** Declines of island foxes only occurred concurrently with the removal of non-native species on Santa Rosa Island. On San Miguel Island, no non-native species removal programs occurred during the period of decline, and on Santa Cruz Island, 9,000 sheep were removed after island fox numbers had declined. An analysis of the best available data regarding the island fox population declines (Coonan *et al.* 2000; Roemer *et al.* 2001b and 2002; Coonan 2003) has not revealed a causal link between the removal of cattle on Santa Rosa Island and the decline. The removal of cattle from Santa Rosa Island may have negatively affected foxes, as the cattle fed on the non-native annual grasses and kept them in check. Although island foxes may have been negatively affected by the proliferation of non-native annual grasses following the removal of cattle (Roemer and Wayne 2003), we do not believe that this was the cause of decline. As described in the rule, predation by golden eagles is the primary cause of decline on the three northern Channel Islands. We are not aware of any data that show that the decline of island foxes is due to the removal of non-native herbivores. In addition, island foxes existed on the islands for thousands of years without the presence of deer, elk, pigs, and cattle. Therefore, it seems unlikely that removing non-native species would cause a decline in island foxes.

**Issue 3:** Two commenters recommended that objective research be conducted prior to the removal of deer and elk on Santa Rosa Island to study the impacts of removing non-native animals. Another commenter asked if the Service or NPS had conducted any research to find out if pigs and cattle have a positive impact on fox populations.

**Our response:** We are not aware of any studies that have been or are planned to be conducted on these subjects. Funding for research has been focused on those areas identified as being most crucial for the recovery of the island fox. On Santa Cruz, Santa Rosa, and San Miguel islands, financial resources have gone into removing the primary threat, golden eagles, and constructing and operating captive breeding facilities. Because island foxes existed on all islands for thousands of years without the presence of deer, elk, pigs, and cattle, the Service concludes that removing these species should not affect the long-term conservation of island foxes once the ecosystem has been restored to more natural conditions.

The Service, the NPS, and the Island Fox Conservation Working Group have identified a concern with the timing of eradication of pigs from Santa Cruz Island. Pig carcasses will be left to decompose on the island, rather than being transported to the mainland. If golden eagles remain on the island, the widespread availability of pig carcasses may increase golden eagle numbers and impede capture efforts by making bait less attractive. In addition, once pigs have been removed or their numbers substantially decreased, lingering golden eagles may switch to island foxes remaining in the wild. The Service, NPS, and TNC are working to develop measures to decrease the probability of the negative effects of pig removal on island foxes. Although the removal of pigs may have short-term negative effects on island foxes, this action is essential to deter golden eagles from colonizing the islands, and will facilitate the long-term recovery of the island fox.

**Issue 4:** One commenter noted that after burros (*Equus asinus*) were removed from San Miguel Island, vegetation piled up, making the island impossible to penetrate. The conversion of once-open hunting grounds to impenetrable forest may have affected the ability of foxes to find food.

**Our response:** No impenetrable forests currently exist on San Miguel Island. When the San Miguel Island fox began to decline, the NPS conducted a study to determine if food availability was the cause of decline. They concluded that the availability of food was not the cause of decline (Coonan *et al.* 1998; Crowell 2001). Numbers of alligator lizards (*Gerrhonotus multicarinatus*), mice, and sea-figs, important components of the San Miguel Island fox diet, did not decrease during the period of decline. In addition, the decrease in fox numbers was not

accompanied by declines in adult fox weight, making lack of food unlikely as a cause of decline.

*Issue 5:* One commenter stated that the removal of greater than 35,000 sheep and 3,000 cattle on Santa Cruz Island resulted in an explosion of fennel (*Foeniculum vulgare*), which now forms “miles of impenetrable fennel-forests.” The commenter poses that the loss of the island foxes’ open hunting habitat caused the population crash. Another commenter speculated that foxes needed the more open habitat that grazing animals provided on all islands, and the removal of those animals led to the decline.

*Our response:* Non-native fennel covers approximately 10 percent of Santa Cruz Island (Breton and Klinger 1994). The densest stands of fennel are concentrated in approximately 1,800 ac (730 ha) (in the isthmus area; an additional 1,600 acres in the central valley on Santa Cruz Island are dominated by fennel (NPS 2002). The best available data do not support the conclusion that island foxes find the fennel to be impenetrable. In a recent study to determine distribution and abundance of island foxes on Santa Cruz Island, most foxes were found in the central valley and isthmus area. Of the 82 foxes trapped during the study, 22 were trapped in the thick fennel stands on the isthmus (Dennis *et al.* 2001). The high percentage of island foxes found in these stands may be due to the fact that the fennel provides foxes with cover from aerial predation by golden eagles. Crooks and Van Vuren (1995) found more foxes in the fennel grasslands than in ravines and patches of scrub oak on the isthmus. As with San Miguel Island, no available data support the idea that island foxes were limited by food availability. Although island foxes (pre-decline) could be found in all vegetative community types occurring on the island, they appear to prefer vegetative communities that provide some cover. As described above, for most of the island foxes’ evolutionary history, non-native herbivores were not present on the islands. Because island foxes existed for thousands of years in the more dense vegetation with increased cover that occurred on the island before the introduction of non-native herbivores, removing these species should not affect the long-term conservation of island foxes once the other threats to its continued existence have been removed.

*Issue 6:* One commenter pointed out that the decrease in the fox population coincided with increased trapping and fox studies by the NPS and other scientists, and that it is possible that

humans played a role in the population decline.

*Our response:* The best available data do not support a causal link between the increased trapping and studies by scientists. In fact, no trapping of island foxes occurred during declines on Santa Catalina and Santa Rosa islands. Surveys that include capture and handling of island foxes are conducted biannually on San Nicolas Island, which has had stable or increasing island fox numbers for approximately a decade. Between 2000 and 2003 (following the decline on Santa Catalina Island), the Catalina Island Conservancy increased capture and handling of island foxes. During this time period, the size of the island fox population has increased.

*Issue 7:* One commenter asked about the sizes of the fox populations on the Channel Islands prior to the influence of Europeans.

*Our response:* We have no data on fox numbers on the Channel Islands prior to the influence of Europeans. We do know from the fossil record that foxes existed on the islands; however, this information cannot be used to determine numbers.

*Issue 8:* One commenter stated that government efforts to rescue island foxes will fail because the foxes are being managed as a “climax” species.

*Our response:* We are not sure what the commenter meant by managing foxes as a “climax” species. Island foxes are found in all habitats on the island, including native habitats such as oak woodlands. Our management for island foxes has focused on addressing the primary causes of decline (golden eagles on the northern Channel Islands and canine distemper on Santa Catalina Island) and on captive propagation of island foxes to bolster numbers.

*Issue 9:* Two commenters disputed the conclusion that the presence of deer on Santa Rosa Island is a threat to the fox, as the deer “likely” compete for flowering and fruiting branches of native shrubs. One commenter stated that no scientific evidence is cited to support this assertion.

*Our response:* Competition between deer and island foxes has not been studied on Santa Rosa Island. In the presence of a healthy island fox population, competition for food resources with deer may occur. Deer have been shown to have a significant browsing effect that reduces the amount of flowering and seed production on the Santa Rosa Island manzanita (*Arctostaphylos confertiflora*) on some study plots (Schreiner *et al.* 2003).

*Issue 10:* Three commenters pointed out that Santa Rosa Island foxes may have been supported in large part by

carion available from the 300 to 400 feral pigs shot annually, as well as from the normal death of piglets. In addition, carion from cattle, elk, and deer would have been available to island foxes. The decline of island foxes on Santa Rosa Island corresponded with the removal of pigs from the island.

*Our response:* Island foxes are omnivorous and do feed upon carion, when available. No studies of food availability were conducted on Santa Rosa Island during the period of decline; however, environmental conditions should have been similar to those on San Miguel Island, where food availability was ruled out as a cause of decline (Coonan *et al.* 1998; Crowell 2001). Although the decline of island foxes on Santa Rosa Island occurred after pig removal, the best available data concerning island fox declines do not implicate feral pig removal as the cause of the declines (Coonan *et al.* 2000; Roemer *et al.* 2001b and 2002; Coonan 2003). We believe that removing pigs has had a net beneficial effect on island foxes, by removing the food source that supports their main predator, the golden eagle thereby discouraging golden eagles from staying on the islands.

*Issue 11:* One commenter pointed out that there is some disagreement on which habitats island foxes prefer, and that scrub and woodland habitat exist on Santa Rosa Island, yet no foxes remain.

*Our response:* The proposed rule states that the island fox is a habitat generalist, occurring in all habitats found on the islands. Some authors have indicated that island foxes prefer areas of diverse topography and vegetation (Von Bloeker 1967; Laughrin 1977; Moore and Collins 1995). Laughrin (1973, 1980) found woodland habitats to support higher densities of island fox due to increased food availability, while Crooks and Van Vuren (1995) found island foxes to prefer fennel grasslands and avoid ravines and scrub oak patches. Because of the generalist nature of the island fox, studies conducted at different times under variable environmental conditions may produce different results. Scrub and woodland habitat only comprise about 5 percent of Santa Rosa Island; the majority of the island is covered by non-native annual grasslands (Clark *et al.* 1990). Although some habitats providing cover do remain on Santa Rosa Island, these habitats have not protected island foxes from golden eagle predation, as no island foxes currently exist in the wild on the island.

*Issue 12:* Several commenters stated that the island fox decline on Santa

Rosa Island coincided with NPS assumption of the ranch. These commenters recommended further investigation of NPS management as a cause of decline.

*Our response:* The best available data concerning the island fox decline on Santa Rosa Island points to the golden eagle as the cause of decline (Roemer 1999; Roemer *et al.* 2001b, 2002; Coonan 2003b; Coonan *et al.* in review; Institute for Wildlife Studies unpublished data). We are aware of no information that indicates that NPS management was responsible for the presence of golden eagles on the island. We are also not aware of other data supporting NPS management as a cause of decline. See responses to issues 2, 5 and 6.

*Issue 13:* Two commenters doubted the importance of golden eagle predation in the island fox declines. One only rarely observed golden eagles on the Santa Rosa Island, while another asked if there have been sightings of numerous successful hunting attempts by golden eagles on island foxes.

*Our response:* Direct observations of golden eagles on the northern Channel Islands have been rare, even by teams of biologists working on golden eagle removal. However, golden eagles commonly leave behind evidence of island fox carcasses that leaves little doubt as to their involvement. Specific evidence found at numerous fox carcasses implicating golden eagle predation includes plucking spots, golden eagle feathers, talon holes, and carcasses typically left by eagles (evisceration, degloving of limbs (*i.e.*, pulling flesh away from bone as in removing a glove), damage to fragile bones). In addition, numerous island fox bones have been found in golden eagle nests on Santa Cruz and Santa Rosa islands (Latta 2001; B. Latta, pers. comm. 2003), indicating that golden eagles were present on the island before 2000 and preyed upon island foxes.

*Issue 14:* One commenter stated that golden eagles had been regular visitors to the islands for years and that island foxes had dealt with aerial predators for eons. Also, due to the more nocturnal nature of foxes, they would not be visible when golden eagles were foraging.

*Our response:* The behavior of the island fox suggests an evolutionary history lacking in predation. As described in the proposed rule, the only known predator of island foxes was the red-tailed hawk (*Buteo jamaicensis*), which preyed only occasionally on young island foxes (Laughlin 1973; Moore and Collins 1995). Although island foxes are primarily nocturnal,

they exhibit more diurnal behavior than mainland gray foxes and can commonly be seen during the daytime. Evidence of golden eagle predation at island fox carcass sites, as well as the remains of island foxes found in a nest on Santa Rosa Island, indicate that golden eagles are finding and preying upon island foxes.

*Issue 15:* One commenter was skeptical that introducing bald eagles (*Haliaeetus leucocephalus*) would assist the island fox situation.

*Our response:* We acknowledge that the effectiveness of bald eagles in assisting with island fox recovery is uncertain. Restoring bald eagles to the northern Channel Islands may deter future golden eagles from becoming resident and attempting to nest on the islands, especially if the majority of the prey base for the golden eagle is removed. Bald and golden eagles are fairly equally matched in interspecific antagonistic interactions; in most cases, the territory holder will have the advantage (B. Latta, pers. comm. 2001). If bald eagles successfully breed and create territories, they may be able to discourage future colonization by nonterritorial golden eagles. However, our recovery actions for the island fox do not hinge upon the success of bald eagle reintroduction. Removing golden eagles and conditions attracting them to the islands is the single most important recovery action for the Santa Cruz, Santa Rosa, and San Miguel island fox and will be implemented regardless of the status of bald eagles on the islands. Unlike golden eagles, which forage on land, bald eagles are primarily marine feeders, and coexisted with island foxes in the past. Remains from an historic bald eagle nest indicate that island foxes constituted less than 0.5 percent of faunal elements found, and these remains were speculated to be scavenged rather than hunted (Collins *et al.* 2003; Paul Collins, Santa Barbara Museum of Natural History, pers. comm. 2003).

*Issue 16:* Two commenters questioned why the proposed listing rule did not include the San Clemente Island fox and the San Nicolas Island fox subspecies, as these populations also have threats to their continued existence. San Nicolas Island foxes have unusually low genetic variability, increasing their susceptibility to disease. One commenter presented information concerning threats to the San Clemente Island fox from the management program for the San Clemente loggerhead shrike (*Lanius ludovicianus mearnsi*). Another commenter disputed the characterization contained in the proposed rule that the decline of the

San Clemente Island fox population was "slow," pointing out that the decline, if continued over time, would probably lead to extinction in the next 100 years.

*Our response:* We limited our analysis in the proposed rule to the four subspecies on which we were petitioned. The petition included substantial information concerning the threats to these four subspecies. We did not receive a petition for the San Clemente and San Nicolas island subspecies. In addition, because we determined that listing was not needed, we did not make these subspecies candidates in the October 2001 NOR. We will continue to monitor the San Nicolas Island fox and San Clemente Island fox to determine if they warrant listing.

*Issue 17:* Three commenters stated that the entire island fox species should be listed, as with precipitous declines on 4 of 6 islands where it occurs, it meets the definition of endangered: "any species which is in danger of extinction throughout all or a significant portion of its range."

*Our response:* The Endangered Species Act allows for listing of species, subspecies, or distinct population segments. Because island foxes have subspecific status on each island where they occur, this taxonomic level is the appropriate level upon which to evaluate our listing decisions. As discussed previously, the island foxes on San Clemente Island and San Nicolas Island do not warrant listing under the ESA.

## Peer Review

In accordance with our July 1, 1994, Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities (59 FR 34270), we solicited review from five experts in the fields of ecology, conservation, genetics, taxonomy, pathology, and management. Four of these have direct experience with island foxes, while the fifth is a well-known mammalogist. The purpose of such a review is to ensure that listing decisions are based on scientifically sound data, assumptions, and analyses, including input from appropriate experts. Three reviewers sent us letters during the public comment period supporting the listing of the four island fox subspecies. All three provided corrections on minor factual issues, interpretation of data, and citations. One recommended that the entire island fox species be listed, while another recommended further scrutiny and monitoring for the San Clemente Island fox. Their information has been incorporated, as appropriate.

### Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act and its implementing regulations (50 CFR part 424) issued to implement the listing provisions of the Act establish procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act. These factors and their application to the four island fox subspecies are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Habitat on all islands occupied by island foxes has been altered by a history of livestock grazing, cultivation, and other disturbance. A century and a half of grazing by non-native herbivores, including sheep, goats (*Capra hircus*), rabbits (*Oryctolagus cuniculus*), deer, elk, cattle, pigs, and horses (*Equus caballus*) resulted in substantial impacts to the soils, topography, and vegetation of the islands (Coblentz 1980; Johnson 1980; O'Malley 1994; Peart *et al.* 1994). Damage to native island plants and their habitats on the northern Channel Islands by introduced stock and game animals is discussed in our 1997 listing of 13 endemic island plants as endangered or threatened (62 FR 40954).

Even after the removal of non-native grazers on some islands, habitat recovery is slow (Hochberg *et al.* 1979) and threatened by the spread of non-native plants that became established during the ranching era. These exotic species continue to invade and modify island fox habitat, resulting in lower diversity of vegetation and habitat structure, and reduced food availability. The replacement of native shrub communities by non-native annual grasslands has reduced protective cover for island foxes, making them more vulnerable to predation (Roemer 1999; Coonan *et al.* in review). Annual grasslands also offer fewer food resources to foxes, and the seeds of non-native annual grasses can become lodged in the eyes of island foxes, causing occasional damage or temporary blindness (Laughrin 1977).

In summary, the habitat of island foxes on all islands has been subject to substantial human-induced changes over the past 150 years. Although these changes have resulted in some adverse effects to island foxes described above, they are unlikely to have directly caused the observed declines. However, the habitat changes indirectly contributed to the effects of other factors (*e.g.*, predation) by reducing the amount of

vegetative cover available to island foxes.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Although island foxes were used in the past for pelts and ceremonial uses by Native Americans (Collins 1991b), island foxes are not currently known to be exploited for commercial, recreational, scientific, or educational purposes.

C. *Disease or predation. Predation.* Recent island fox declines on San Miguel, Santa Cruz, and Santa Rosa islands have been attributed to predation by golden eagles (Roemer 1999; Roemer *et al.* 2001b, 2002; Coonan *et al.* in review). Roemer (1999) linked 19 of 21 documented island fox mortalities on Santa Cruz Island between April 1994 and July 1997 to golden eagles. Most (90 percent) of these mortalities occurred in 18 months between April 1994 and September 1995. On San Miguel Island, 5 of 7 mortalities of radio-collared foxes were attributed to golden eagle predation between 1998 and 1999 (Roemer *et al.* 2001b; Coonan *et al.* in review). No mortality data exist from Santa Rosa Island, but due to its location between Santa Cruz and San Miguel islands, island foxes on Santa Rosa Island likely experienced similar predation pressures from golden eagles.

As island foxes did not evolve with the presence of a large avian predator, they are likely not vigilant towards avian predators, and thus provide an easy target for golden eagles (Roemer *et al.* 2001b). Golden eagle predation continues to be the leading cause of mortality of island foxes on Santa Cruz Island. In 3 years of islandwide radio tracking on the island, 16 of 20 island fox mortalities were attributed to golden eagle predation (Institute for Wildlife Studies, unpublished data). Annual survivorship of Santa Cruz Island foxes, as estimated from radiotelemetry, was 61 percent in 2001 and 70 percent in 2002 (Coonan 2003b). This level of survivorship is below the 80 percent required for an increasing island fox population (Roemer *et al.* in prep.).

The current level of golden eagle activity on the northern Channel Islands is unprecedented (Roemer *et al.* 2002). Golden eagles were known to occasionally visit the islands but never to establish residence (Diamond and Jones 1980; Jones and Collins, in prep.). The first known active golden eagle nest on the Channel Islands was located on Santa Cruz Island in 1999 (Latta 2001), but golden eagles were likely established on the island as early as 1994 (Roemer *et al.* 2001b). Island fox remains, along with the remains of feral

piglets, common ravens (*Corvus corax*), Brandt's cormorants (*Phalacrocorax penicillatus*), and western gulls (*Larus occidentalis*), were found in the nest. In September 1999, surveys by the Santa Cruz Predatory Bird Research Group (SCPBRG) identified 12 resident golden eagles, including possibly 5 breeding pairs on Santa Cruz Island.

At the time we published the proposed rule, golden eagles breeding on Santa Cruz Island were thought to "commute" to Santa Rosa and San Miguel Islands to feed. On Santa Rosa and San Miguel Islands, eagles find fewer alternative prey species to island foxes (*e.g.*, no feral pigs on Santa Rosa and San Miguel islands as occur on Santa Cruz Island) and foxes have less cover from vegetation to hide them from avian predators (Roemer 1999). However, since the proposed rule was published, we have obtained information that two breeding pairs appeared to have successfully bred on Santa Rosa Island during the period when island fox numbers were declining (Latta 2003). Remains of island foxes, deer fawns, and numerous birds were found during an excavation of one of the nests on Santa Rosa Island, indicating that golden eagles were breeding on the island before island foxes were taken into captivity in 1999 and 2000.

Before golden eagles started using the northern Channel Islands in the 1990s, the only known predator of island foxes was the red-tailed hawk (*Buteo jamaicensis*), which preyed only occasionally on young island foxes (Laughrin 1973; Moore and Collins 1995). The docile and inquisitive nature of the island fox (Laughrin 1977) suggests an evolutionary history lacking predation (Carlquist 1974).

The recent colonization of the northern Channel Islands by golden eagles is likely a combination of two factors: (1) Introduction of exotic mammals on the northern Channel Islands, resulting in a historically unprecedented prey base, and (2) the extirpation of bald eagles from the islands as a result of dichlorodiphenyltrichloroethane (DDT) poisoning. Historically, the small population of vertebrate island fauna would have provided little prey for golden eagles, which rely on a diet of small terrestrial vertebrates. Before the ranching era on the Channel Islands, transient golden eagles landing on the islands would have found little prey to encourage them to establish permanent residence. Furthermore, nesting bald eagles would have discouraged foraging golden eagles from establishing residence by aggressively defending

their already established territories. Bald eagles are represented in the prehistoric fossil record of the northern Channel Islands (Guthrie 1993) and bred there until 1960, when nest failures, as a result of DDT contamination, extirpated them from the northern Channel Islands (Kiff 1980). The northern Channel Islands (Anacapa, Santa Cruz, Santa Rosa, and San Miguel) likely supported more than 14 pairs of bald eagles before their decline (Kiff 1980).

Roemer *et al.* (2001b) modeled time-energy budgets and predation rates of golden eagles on Santa Cruz Island to determine if the precipitous decline in island foxes could be attributed to predation alone. They concluded that the island fox declines on the northern Channel Islands are a consequence of hyperpredation, defined as when the availability of one prey species, that can sustain high predation rates, leads to the extinction of another prey species that becomes an alternate food resource for a shared predator (Courchamp *et al.* 1999). In this case, the large feral pig population provided sufficient prey base for the golden eagle to colonize Santa Cruz Island: A resident golden eagle population could not have been supported by the native terrestrial vertebrate fauna alone (Roemer *et al.* 2001b). Their model indicates that as few as 6 golden eagles could have driven the island fox populations to the current low levels. Between 1999 and the present, 31 golden eagles have been translocated from Santa Cruz Island (Latta 2003). Currently, 8 golden eagles are thought to remain on the islands. Three adults that have bred or attempted breeding in the past are thought to be on Santa Rosa Island, while 3 (3 breeding adults and 2 subadults) remain on Santa Cruz Island.

The remaining golden eagles constitute a substantial threat, seriously jeopardizing the success of releases of captive island foxes on San Miguel and Santa Rosa Island, and preventing recovery of island foxes in the wild on Santa Cruz Island.

Non-native deer and elk on Santa Rosa Island provide a food source that helps golden eagles establish territories and attempt breeding on the island. Fawn remains have been found in a golden eagle nest on Santa Rosa Island (Coonan 2003b), and golden eagles likely feed upon carrion and gut piles from the commercial hunt of elk and mule deer occurring between August and December each year. In addition to the commercial hunt, between 200 and 500 deer are culled annually. The availability of carrion in winter determines whether golden eagles

attempt to breed (general data for GEs) (Lockie 1964). Watson *et al.* (1992) found golden eagle densities to be highest in areas where there were abundant dead sheep and/or deer. In one location, golden eagle density declined when deer management was altered in a manner that resulted in reduced carrion availability (Watson *et al.* 1989). Until unnatural prey sources on the islands are eliminated, removal of golden eagles may be temporary, and the continued presence of golden eagles would likely prevent recovery of island foxes. Under the provisions of a settlement agreement between the NPS and the commercial hunt operators, deer and elk will be removed from Santa Rosa Island permanently by 2011, with decreases in both populations slated to begin in 2008.

Golden eagles have not been recorded breeding on San Miguel Island. No tall trees that could support a golden eagle nest exist on this island. However, because empirical evidence linked golden eagle predation to 5 of 7 island fox carcasses discovered in 1998 and 1999 (Roemer *et al.* 2001b; Coonan *et al.* in review), golden eagles breeding on the other two islands must have "commuted" to San Miguel Island to feed. The island fox would have been the largest prey item available for these commuting golden eagles, as no larger non-native herbivores were present during the period of decline. Golden eagles have never been recorded breeding on Santa Catalina Island and are not known to be a threat to that subspecies.

To protect island foxes on the northern Channel Islands from further declines, the NPS, the Service, and TNC funded a golden eagle removal program, which began on Santa Cruz Island in August of 1999 and was expanded to include Santa Rosa Island in 2003. Between the fall of 1999 and October 2003, 31 golden eagles were captured and removed from Santa Cruz and Santa Rosa islands, with the majority (29) being captured on Santa Cruz (Latta 2003). Eight golden eagles are thought to remain on Santa Cruz and Santa Rosa Islands.

Due to trap wariness, the abundance of feral pig and other prey, and the harsh topography of Santa Cruz Island, the remaining golden eagles have proven difficult to trap (B. Latta, pers. comm. 2001). Thus, despite these efforts to remove golden eagles from the islands, golden eagle predation continues to be the main cause of mortality of island foxes on Santa Cruz Island and would likely constitute a serious predation threat to any foxes subsequently released from captive

breeding programs on Santa Rosa and San Miguel islands. Two captive-born island fox juveniles released to the wild in December 2002 were killed by golden eagles soon after they left rearing pens. Captive-raised foxes may be more vulnerable to predation than wild-raised foxes, and could continue to incur considerable predation with just a few eagles on the islands.

We are currently investigating the feasibility of reintroducing bald eagles to the northern Channel Islands (Valoppi *et al.* 2000). As part of this feasibility study, juvenile bald eagles were released on Santa Cruz Island in 2002 and 2003. Currently, 15 bald eagles inhabit Santa Cruz and Santa Rosa islands (D. Garcelon, in litt. 2003). The feasibility study is being conducted as a pilot project to assess the potential breeding success of bald eagles on the northern Channel Islands, and will include several aspects of monitoring bald eagle movement and exposure to 2, 2-Bis (p-chlorophenyl)-1, 1-dechloroethylene (DDE), the metabolized form of DDT. The presence of territorial golden eagles on the islands may hinder bald eagle reintroduction, because territorial golden eagles may chase away non-nesting bald eagles (B. Latta, pers. comm. 2001). Conversely, the presence of territorial bald eagles on the northern Channel Islands may assist in discouraging transient golden eagles from establishing breeding territories on the islands. However, the success of bald eagle introduction efforts is uncertain, and would take years to discern, due to the long time it takes for bald eagles to reach sexual maturity (4 years or more). Therefore, if reintroduction efforts are successful, bald eagles will not nest on the islands until 2006. Because Santa Cruz Island is large enough for many eagle breeding territories, a large resident bald eagle population would be necessary to be successful in discouraging future colonization by golden eagles from the mainland.

*Disease.* On Santa Catalina Island, the large, sudden decline in island foxes has been attributed to canine distemper, most likely brought to the island by a domestic dog (Timm *et al.* 2000). The steep and sudden pattern of decline on Santa Catalina Island is typical of a disease outbreak rather than the slower decline pattern seen on the northern Channel Islands from predation (Timm *et al.* 2000). In addition to positive testing for canine distemper in foxes caught on the east end of Santa Catalina Island, the evidence suggesting a disease-related decline versus other causes are: (1) The population decline

on Santa Catalina Island is of a similar magnitude (90 percent) as that on the northern Channel Islands, but occurred within 1 year rather than the steady 6-year decline seen on San Miguel, Santa Cruz, and Santa Rosa Islands; (2) the declines on the northern islands are islandwide, while the geographically restricted western population on Santa Catalina Island has remained relatively healthy; and (3) sick foxes have been seen on Santa Catalina Island but not on the northern islands (G. Roemer, pers. comm. 2000).

Two healthy adult foxes caught on the east end of Santa Catalina Island in 1999 had high antibody titers to canine distemper virus, constituting the first positive records of canine distemper in island fox. A necropsy of one island fox identified the cause of death as canine distemper (Timm *et al.* 2000). No island foxes tested positive for canine distemper in a previous comprehensive serologic survey of all islands (Garcelon *et al.* 1992), nor did any foxes from San Clemente, Santa Cruz, or San Miguel test positive for canine distemper virus during the period (1994 to 1997) of the fox decline on the northern islands (Roemer *et al.* 2001b).

The absence of antibodies to canine distemper virus in any island foxes during these studies implies that, either the virus had never been introduced to the islands, or the species is highly susceptible to the virus and none survive infection. Previous studies had found no evidence of canine distemper in Santa Catalina Island foxes (Garcelon *et al.* 1992), although a recent assay of wild island fox blood samples discovered evidence of previous exposure to canine distemper virus on all islands with wild foxes (Coonan 2003). Although the ramifications of this discovery are not entirely understood, it is now believed that the virus may occasionally affect wild island fox populations, but that some individuals survive (as evident by the existence of survivors with evidence of exposure). Because wild foxes with antibodies against canine distemper virus have immunity, and thus protection against the next outbreak, a greater degree of protection could be conferred to wild populations by vaccinating wild foxes against canine distemper virus. As the closely related mainland gray fox is highly susceptible to canine distemper virus, island foxes likely have high susceptibility as well (Garcelon *et al.* 1992). This hypothesis is supported by the deaths of two island foxes in zoos from the inappropriate administration of modified live canine distemper vaccine (Linda Munson, University of California at Davis, pers. comm. 2001).

Although the outbreak of canine distemper that precipitated the sudden decline of island foxes on Santa Catalina Island has apparently run its course, the Santa Catalina Island subspecies remains susceptible to another outbreak of the disease due to the continued exposure to domestic dogs that may transmit the virus.

Administration of an experimental canine distemper vaccine developed for ferrets (another species highly susceptible to canine distemper) to some island foxes captured on Santa Catalina Island has had promising preliminary results (S. Timm, pers. comm. 2001). With further testing, the vaccine may prove useful for protecting island foxes on all islands from future canine distemper outbreaks. One hundred thirty-eight island foxes in captivity and in the wild on Santa Catalina Island have been administered vaccinations and booster shots during 2001 and 2002. Currently, 95 percent of island foxes on the west end and 45 percent of foxes on the east end of Santa Catalina Island have been vaccinated against canine distemper virus (Kohlmann *et al.* 2003). The Island Fox Conservation Working Group recommends expanding the canine distemper vaccination program to other islands (Coonan 2003b).

A recent serosurvey of island foxes showed that wild foxes on Santa Catalina, San Nicolas, San Clemente, and Santa Cruz Islands had evidence of exposure to canine distemper virus (Fritcher *et al.* in prep.). This result was surprising given the results of an earlier study that did not find evidence of canine distemper virus exposure (Garcelon *et al.* 1992). San Nicolas and Santa Cruz Islands had the highest canine distemper virus antibody prevalence. Given the high numbers of island foxes on San Nicolas Island, the canine distemper virus appears to not have the same effect as on Santa Catalina Island, perhaps indicating that the different islands were exposed to viruses of differing morbidity (Fritcher *et al.* in prep.).

All island fox populations have been surveyed for other canine diseases and parasites. Although island foxes are known to carry antibodies for a variety of canine diseases, none of these could explain the type or geographic distribution of the observed decline on the northern Channel Islands (Garcelon *et al.* 1992; Coonan *et al.* 2000; Roemer 1999; Roemer *et al.* 2001b). Although pathology work has not identified a specific cause of population decline (with the exception of canine distemper virus on Santa Catalina Island), some underlying diseases or parasites may

also affect population viability or individual health (L. Munson, pers. comm. 2001). The most common antibodies found in island foxes are canine adenovirus and canine parvovirus (Garcelon *et al.* 1992; Fritcher *et al.* in prep.). Canine herpesvirus, coronavirus, leptospirosis, and toxoplasmosis have been recorded at low levels (Garcelon *et al.* 1992; Coonan *et al.* 2000; Roemer *et al.* 2001b). The relative occurrence of canine adenovirus was similar before and after the population crashes on these islands, while antibodies for parvovirus were detected from a small number of samples from 1994, but not detected in 1995 or 1997 samples (Coonan *et al.* 2000). More recent information shows an increase in the prevalence of parvovirus on Santa Catalina Island in 2001 and 2002, a period of time when that population was beginning to recover from canine distemper (Fritcher *et al.* in prep.). Canine parvovirus has been found in other wild canids and can result in mortality of pups, prior to emergence from the den (Garcelon *et al.* 1992). Canine adenovirus may be typically present in the island fox populations (Garcelon *et al.* 1992), with little effect on individual health. However, because both Santa Catalina and Santa Cruz islands have never been exposed to canine adenovirus (Garcelon *et al.* 1992; Fritcher *et al.* in prep.), these subspecies are naïve to the virus and would be more susceptible to exposure to adenovirus.

Antibodies to canine heartworm (*Dirofilaria immitis*) have been documented in four island fox subspecies (San Miguel, Santa Cruz, Santa Rosa, and San Nicolas island foxes) (Roemer *et al.* 2000). Despite the high seroprevalence (*i.e.*, occurrence) of heartworm in these populations (between 58 and 100 percent in 1997), heartworm is not thought to be responsible for the decline of island foxes for the following reasons: (1) Seroprevalence on San Nicolas Island, where the population is stable, is higher than on Santa Cruz Island, where the population is decreasing (Roemer *et al.* 2001b); (2) heartworm antibodies were present in all four subspecies in or before 1988, pre-dating the population declines; (3) seroprevalence in the San Miguel population was high in 1994, when densities on that island reached the highest levels ever recorded for island foxes; and (4) necropsy results have found few adult worms in the hearts of island foxes and no evidence of heartworm disease (Roemer 1999). However, heartworm may have



contributed to mortality in older foxes (Roemer *et al.* 2001b), exacerbating the conservation crisis for the island fox.

Necropsies performed at the University of California at Davis have detected an unusually high degree of thyroid atrophy (characterized by a complete absence of colloid in the thyroid gland) in island foxes from San Clemente, Santa Catalina, San Nicolas, and San Miguel Islands (L. Munson, pers. comm. 2001). The cause of thyroid atrophy in island foxes has yet to be investigated; thyroid atrophy in other species has been linked to high levels of polychlorinated biphenyls (PCBs). It is unclear how thyroid atrophy is affecting fox populations (L. Munson, pers. comm. 2001). Pathology work on 89 foxes has also detected an increased prevalence of emaciation (20 percent pre-1994; 47 percent post-1994); it is unknown why increased emaciation has occurred.

In summary, we have concluded that disease and predation under Factor C result in substantial extinction risk for four subspecies of island fox. Specifically, predation of island foxes by golden eagles was directly responsible for the decline of island foxes on Santa Cruz, Santa Rosa, and San Miguel Islands, while an outbreak of canine distemper virus was directly responsible for the decline of the Santa Catalina Island fox.

D. *The inadequacy of existing regulatory mechanisms.* The primary causes of the decline of the island fox are unprecedented predation by golden eagles and the rapid transmission of canine distemper through the Santa Catalina Island subspecies. Federal, State, and local laws have not been sufficient to prevent past and ongoing losses of island foxes.

In 1971, the State of California listed the island fox as State-rare (a designation later changed to threatened), which means that it may not be taken without a special (*i.e.*, scientific collecting) permit (California Code of Regulation, Title 14, Section 41) or an incidental take permit issued pursuant to section 2081 of the California Endangered Species Act. However, this protection applies generally only to actual possession or intentional killing of individual animals, or actual death of individual animals incidental to otherwise lawful activity. State law does not require Federal agencies to avoid or compensate for impacts to the island fox and its habitat. There are currently no State regulatory mechanisms designed to protect island foxes on federally managed lands, including San Miguel, Santa Rosa, and Santa Cruz Islands.

Federal law governs the management of NPS (San Miguel, Santa Cruz, and Santa Rosa islands) and Navy (San Miguel Island) lands, including the National Environmental Policy Act (NEPA), the Endangered Species Act, the National Park Service Organic Act, and the Marine Mammal Protection Act. Many federally listed plant and animal species, including 14 listed plants, the brown pelican (*Pelecanus occidentalis*), the southern sea otter (*Enhydra lutris nereis*), the island night lizard (*Xantusia riversiana*), and the western snowy plover (*Charadrius alexandrinus nivosus*), occur on the Channel Islands. NPS management is further dictated by Department of the Interior policies and NPS policies and guidelines, including NPS guidelines for natural resources management (NPS 1991), and the Channel Islands National Park Management Plan (NPS 1985). Both the NPS and the Navy have adequate authority to manage the land and activities under their administration to benefit the welfare of the island fox. The NPS developed a recovery strategy for island foxes on the northern Channel Islands to guide their recovery options. This strategy contains many elements of the recovery plans outlined in section 4 of the Act.

The NPS has implemented portions of their recovery strategy to prevent the extinction of the island foxes in the near term. Despite the best efforts of the NPS, the populations have significantly declined in recent years such that on San Miguel, no foxes remain in the wild, on Santa Rosa, there are likely no foxes in the wild, on Santa Cruz, approximately 68 foxes remain in the wild, and on Santa Catalina, approximately 215 foxes remain in the wild.

Because the number of foxes on San Miguel, Santa Rosa, and Santa Cruz islands declined to extremely low numbers as a result of predation by golden eagles, the NPS and The Nature Conservancy captured the remaining individuals and initiated a captive breeding program. Captive breeding efforts prevented the almost assured extinction of the San Miguel and Santa Rosa island foxes, but the existence of animals bred in captivity alone is not sufficient to ensure recovery; there must be successful reintroduction of the island foxes to the wild. Although captive breeding has been conducted for approximately three years, and the number of island foxes in captivity has increased, this has not resulted in a substantial reduction in the extinction risk for the fox, as island fox releases have either not occurred (San Miguel Island), have been unsuccessful (Santa

Cruz Island) or the results are not yet determinable (Santa Rosa Island). While we have been working with NPS to remove the threats to island foxes from golden eagle predation and disease, the success of these efforts and captive breeding and feral pig removal remains uncertain. Steps are underway to understand the prevalence of disease and the potential use of vaccination. However, even with the ongoing conservation efforts, the low population numbers and uncertainty of the effectiveness of these efforts leave the island fox in danger of extinction.

San Miguel Island is under the jurisdiction of the Navy, but the NPS assists in managing the natural, historic, and scientific values of San Miguel Island through a Memorandum of Agreement (MOA) originally signed in 1963, an amendment signed in 1976, and a supplemental Interagency Agreement (IA) signed in 1985. The MOA states that the "paramount use of the islands and their environs shall be for the purpose of a missile test range, and all activities conducted by or in behalf of the Department of the Interior on such islands, shall recognize the priority of such use" (Navy 1963). The Navy currently does not actively use San Miguel Island. In addition to San Miguel, Santa Cruz and Santa Rosa islands also lie wholly within the Navy's Pacific Missile Test Center (PMTTC) Sea Test Range. The 1985 IA provides for PMTTC to have access and use of portions of those islands, for expeditious processing of any necessary permits by NPS, and for mitigation of damage of park resources from any such activity (Navy 1985). Should the Navy no longer require use of the islands, NPS would seek authorization for the islands to be preserved and protected as units within the NPS system (Navy 1976). To date, conflicts concerning protection of sensitive resources on San Miguel Island have not occurred. The Navy contributed \$100,000 to island fox conservation efforts on San Miguel Island in 2000 and 2001.

On islands managed by Federal agencies, prohibitions against bringing domestic pets to the islands exist. These prohibitions are difficult to enforce and violations are known to occur. Boaters have been observed bringing pets onshore to all three northern Channel Islands with island fox populations. On Santa Catalina Island, health certificates or quarantines are not necessary to bring domestic pets to the islands, exposing island foxes to increased risk of disease. On Santa Rosa Island, a ranching enterprise operating under a special use permit from the NPS is allowed to have ranch dogs on the island provided that



the dogs have proof of vaccination in compliance with Santa Barbara County regulations, which requires only rabies shots.

Federal protection of golden eagles by the Bald and Golden Eagle Protection Act of 1962, as amended, has increased the golden eagle population on mainland California (Brian Walton, SCPBRG, pers. comm. 2000). As a result, golden eagles have expanded their range in order to establish breeding territories. The protections afforded golden eagles limit management alternatives to protect island foxes. Lethal removal of golden eagles would require a depredation permit from the Service. Such a permit would allow golden eagles to be taken by firearms, traps, or other suitable means, except by poison or from aircraft (50 CFR 22.23(b)(1)). The regulatory restrictions on taking golden eagles limit the effectiveness of golden eagle removal, as the very steep topography on Santa Cruz Island makes lethal removal of golden eagles from the ground infeasible.

The golden eagle is considered a fully protected species by the State of California (California Fish and Game Code, section 3511). Fully protected species may not be taken or possessed at any time, and no licenses or permits may be issued for their take except for collecting these species for necessary scientific research and relocation of the bird species for the protection of livestock. However, on October 9, 2003, this law was amended by SB412, which allows the California Department of Fish and Game to authorize the take of fully protected species for scientific research, including research on recovery for other imperiled species. Therefore, the State law no longer prohibits take of golden eagles for the purpose of recovering the island fox if the appropriate authorization is granted.

California State law (Food and Agricultural Code 31752.5) prohibits lethal control of feral cats unless cats are held for a minimum of six days. This law prevents the Catalina Island Conservancy from taking steps to eradicate feral cats on the island, as it does not have adequate facilities to hold cats (see Factor E).

In summary, the existing regulatory mechanisms have not prevented the steep declines of the four island fox subspecies and will not ensure their recovery. One Federal law (the Bald and Golden Eagle Protection Act) and two State laws (California Fish and Game Code, section 3511, and Food and Agricultural Code 31752.5) have delayed or precluded the implementation of needed recovery actions for island foxes. Despite current

efforts, the island foxes meet the definition of endangered.

*E. Other natural or manmade factors affecting its continued existence.*

Several other factors, including competition from introduced species and stochastic environmental factors, may have negative effects on island foxes and their habitats.

*Competition with feral cats.* CDFG, in recommending the retention of the threatened classification of the island fox under State law, cited competition with feral cats on Santa Catalina, San Nicolas, and San Clemente Islands (CDFG 1987). The effects of cats on island foxes are unknown and may differ among islands. Feral cats outweigh island fox by an average of 2 to 1 and may negatively affect island foxes by direct aggression, predation on young, disease transmission, and competition for food resources (Laughrin 1978). Island fox population decreases on San Nicolas Island were accompanied by a concomitant increase in feral cat populations (Laughrin 1978). The presence of feral cats increases the risk of a transfer of infectious disease to island foxes (Roelke-Parker *et al.* 1996). Feral cats have been found to displace island foxes from habitats on San Nicolas Island (Kovach and Dow 1985). As has been seen on San Nicolas and San Clemente islands, feral cats are extremely difficult to eradicate, requiring ongoing yearly programs to keep numbers controlled (Phillips and Schmidt 1997). No feral cat control exists on Santa Catalina Island due to local ordinances and resistance to lethal control from the residents of the island.

*Lack of genetic variability.* As a population becomes genetically homogenous, its susceptibility to disease, parasites, and extinction increases (O'Brien and Evermann 1988) and its ability to evolve and adapt to environmental change is diminished (Templeton 1994). The four island fox subspecies that have suffered large population declines could be at risk of having reduced genetic variability. Such population or demographic "bottlenecks" (severe crashes in population resulting in abnormally low numbers) may result in reductions in genetic variation, depending on the size of the bottleneck and the growth rate of the population afterward (Meffe and Carroll 1997). In fact, at least one previously variable microsatellite locus is now fixed (*i.e.*, one DNA marker no longer exhibits any genetic variability) in the San Miguel Island captive population (Gray *et al.* 2001). The effect of population bottlenecks on island fox genetic variation is demonstrated by an example from San Nicolas Island. The

San Nicolas Island fox has an unusually low degree of genetic variability (Gilbert *et al.* 1990; Wayne *et al.* 1991; Goldstein *et al.* 1999), which may have been due to a major historical bottleneck (Gilbert *et al.* 1990). A lack of genetic variability can correspond to a reduced resistance to disease or physical abnormalities due to inbreeding. Due to the low numbers of individuals in the captive breeding programs and the lack of wild populations on San Miguel and Santa Rosa Islands, low genetic variability threatens the island foxes from these islands. The threat also exists on Santa Cruz and Santa Catalina islands, although the bottleneck was less severe on these islands.

*Stochastic environmental and population factors.* Island endemic species have high extinction risk due to isolation and small population sizes (MacArthur and Wilson 1967). Because the island fox is restricted to small islands, it is more subject to the effects of environmental perturbations and decline of birth rates due to low densities (*i.e.*, Allee effects, Allee 1931) than species occurring on the mainland. Reduced population size exposes the island fox to both catastrophic environmental events (*e.g.*, drought, wildfire, or disease) and demographic factors (*e.g.*, skewed sex ratios) that could cause or hasten extinction. Wildfires could affect island foxes by reducing food availability, altering vegetation, or resulting in the death of individual foxes (especially pups during the denning season). On San Miguel and Santa Rosa Islands, which no longer have wild populations, the concentration of all island foxes into small geographic areas increases the vulnerability of these subspecies to disease outbreaks. The extremely small captive island fox population sizes on San Miguel, Santa Rosa, and Santa Cruz Islands puts those populations at risk of extinction due to demographic factors as well. For example, 4 of the 14 original island foxes brought into the captive propagation program on San Miguel Island were male. Skewed sex ratios may hinder recovery efforts for the species, because island foxes typically form long-standing pair bonds and unpaired females have never been recorded to raise a litter.

*Road mortalities.* The fearless nature of island foxes, coupled with relatively high vehicle traffic on the southern Channel Islands, results in a number of vehicle collisions each year on islands with human populations (Wilson 1976; Garcelon 1999; G. Smith, unpublished data). For example, on San Nicolas Island where vehicle collisions are the largest documented mortality source, an

average of 13 fox carcasses attributed to vehicle collisions are recovered each year (G. Smith, unpublished data). On San Clemente Island, vehicle strikes claimed a minimum of 26 foxes between the years 1991 and 1995 (Garcelon 1999), while in earlier times, Wilson (1976) estimated that approximately 25 island foxes were killed each year. Although no records have been kept, vehicle collisions likely cause a number of island fox deaths on Santa Catalina Island each year. Vehicle collisions on the northern Channel Islands are uncommon due to low traffic volume and the rough unpaved nature of most roads.

In summary, other threats analyzed under Factor E either directly contribute or may contribute to the decline of island foxes. However, the threat of roadkill alone is unlikely to have been a cause of decline, and the reduced genetic variability and the increased probability of extinction due to stochastic factors are risks that have

emerged as a result of the decline rather than a cause.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these taxa in determining to propose this rule. The precipitous declines of the four island fox subspecies addressed in this rule are primarily due to predation from golden eagles (on San Miguel, Santa Rosa, and Santa Cruz islands) or canine distemper virus (on Santa Catalina Island), as well as indirect and direct effects of the introduction of non-native mammals on all islands. Other threats include disease and competition from feral cats, road mortality on Santa Catalina Island, and natural events, all of which could diminish or destroy the small extant populations. Existing regulatory mechanisms are inadequate to protect these taxa. See Tables 1–4 for summaries of the status, major threats, conservation actions, and effectiveness for each of the four subspecies. Based on our evaluation, the San Miguel Island

fox, Santa Cruz Island fox, Santa Rosa Island fox, and Santa Catalina Island fox fit the definition of endangered as defined in the Act.

#### Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management consideration or protection and, (ii) specific areas outside the geographical area occupied by a species at the time it is listed in accordance with the provisions of section 4 of the Act, upon a determination by the Secretary that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

TABLE 1.—SUMMARY OF STATUS, MAJOR THREAT, CONSERVATION ACTIONS, AND THEIR EFFECTIVENESS FOR THE SAN MIGUEL ISLAND FOX

[0 = Number of foxes in wild; 38 = Number of foxes in captivity; 450 = Number of foxes in 1994]

Major threat causing decline	Conservation action	Assess effectiveness
Predation by golden eagles	<p>Capture island foxes for sanctuary from predation .....</p> <p>Implement captive breeding for augmentation of population.</p> <p>Reintroduce foxes from captive breeding into the wild ..</p> <p>Decrease the threat of predation from golden eagles by:</p> <p>(a) Removing golden eagles from the northern channel islands;</p> <p>and</p> <p>(b) Removal of feral pigs from Santa Cruz Island so that golden eagles are not sustained or attracted to the northern Channel Islands.</p>	<p>Successful in preventing the near-term extinction of the San Miguel Island fox.</p> <p>Captive breeding has been successful in maintaining and increasing the captive population. However, there are inherent problems with captive breeding (e.g., disease, captive stress syndrome resulting in mortality, low productivity, etc.)</p> <p>This effort has not been implemented on San Miguel Island due to continued threat of predation by golden eagles. The reintroduction program will be experimental, and there are inherent uncertainties that may affect its success (e.g., inexperience of captive-born animals).</p> <p>Unsuccessful to date, although see (b) below.</p> <p>(a) Eight golden eagles remain on Santa Cruz and Santa Rosa islands. This is larger than the number expected to cause extinction of island foxes in 7–10 years. Eagles from those islands are transient visitors to San Miguel Island. Golden eagles continue to be the singlemost important threat.</p> <p>(b) This action is proposed to begin being implemented in summer/fall 2004, and will take 4–6 years to complete.</p>

Summary: The island fox population on San Miguel Island has decreased by over 80% since 1994. Currently, removing golden eagles from the northern Channel Islands is the single-most important recovery action, and these efforts have not been successful to date. Reintroduction of foxes on San Miguel Island has not been implemented due to the threat of predation by golden eagles. Captive breeding and reintroduction programs are expensive, and long-term funding is not assured.

TABLE 2.—SUMMARY OF STATUS, MAJOR THREAT, CONSERVATION ACTIONS, AND THEIR EFFECTIVENESS FOR THE SANTA ROSA ISLAND FOX

## SANTA ROSA ISLAND FOX

[6–7 = Number of reintroduced foxes; 56 = Number of foxes in captivity; &gt;1,000 = Number of foxes in 1994]

Major threat causing decline	Conservation action	Assess effectiveness
Predation by golden eagles	<p>Capture island foxes for sanctuary from predation .....</p> <p>Implement captive breeding for augmentation of population.</p> <p>Reintroduce foxes from captive breeding into the wild ..</p> <p>Decrease the threat of predation from golden eagles by:</p> <ul style="list-style-type: none"> <li>(a) Removing golden eagles from the northern channel islands;</li> <li>(b) Removing feral pigs so that golden eagles are not sustained or attracted to northern Channel Islands;</li> <li>and</li> <li>(c) Managing deer and elk hunts on Santa Rosa Island to reduce availability of carcasses as food source for golden eagles.</li> </ul>	<p>Successful in preventing the extinction of the Santa Rosa Island fox in the near term.</p> <p>Captive breeding has been successful in maintaining and increasing the captive population. However, there are inherent problems with captive breeding (e.g., disease, captive stress syndrome resulting in mortality, low productivity, etc.).</p> <p>This program is experimental. Eight foxes released in 2003, 1 and possibly 2 of which were killed by golden eagles. If one more fox is killed by an eagle, the remainder will be recaptured and returned to captivity to avoid further losses. Furthermore, there are inherent uncertainties that may affect the success of reintroduction programs (e.g., inexperience of captive-born animals).</p> <p>Unsuccessful to date, although see (b) below.</p> <ul style="list-style-type: none"> <li>(a) Eight golden eagles remain on Santa Cruz and Santa Rosa islands. This is larger than the number expected to cause extinction of island foxes in 7–10 years. Golden eagles continue to be the single most important threat.</li> <li>(b) This action is proposed to begin being implemented in summer/fall 2004, and will take 4–6 years to complete.</li> <li>(c) Park Service and permittee working cooperatively for changes in operations. By current agreement, reduction in deer and elk numbers will occur by 2008 and animals eliminated by 2011.</li> </ul>

Summary: The island fox population on Santa Rosa Island has decreased by approximately 95% since 1994. Currently, removing golden eagles from the northern Channel Islands is the single-most important recovery action, and these efforts have not been successful to date. Predation by golden eagles continues to be the leading cause of mortality of island foxes in the wild on Santa Rosa Island. Captive breeding and reintroduction programs are expensive, and long-term funding is not assured.

TABLE 3.—SUMMARY OF STATUS, MAJOR THREATS, CONSERVATION ACTIONS, AND THEIR EFFECTIVENESS FOR THE SANTA CRUZ ISLAND FOX

## SANTA CRUZ ISLAND FOX

[~70 = Number of foxes in wild; 40 = Number of foxes in captivity; 1,300 = Number of foxes pre-decline]

Major threat causing decline	Conservation action	Assess effectiveness
Predation by golden eagles	<p>Capture island foxes for sanctuary from predation .....</p> <p>Implement captive breeding for augmentation of population.</p> <p>Reintroduce foxes from captive breeding into the wild ..</p>	<p>Successful in preventing the extinction of the Santa Cruz Island fox.</p> <p>Captive breeding has been successful in maintaining and increasing the captive population. However, there are inherent problems with captive breeding (e.g., disease, captive stress syndrome resulting in mortality, low productivity, etc.).</p> <p>This effort is experimental and unsuccessful to date. Five of nine foxes released in winter 2003 were killed by golden eagles. The remainder were recaptured and returned to captivity to avoid further losses. Furthermore, there are inherent uncertainties that may affect the success of reintroduction programs (e.g., inexperience of captive-born animals).</p>

TABLE 3.—SUMMARY OF STATUS, MAJOR THREATS, CONSERVATION ACTIONS, AND THEIR EFFECTIVENESS FOR THE SANTA CRUZ ISLAND FOX—Continued  
SANTA CRUZ ISLAND FOX

[~70 = Number of foxes in wild; 40 = Number of foxes in captivity; 1,300 = Number of foxes pre-decline]

Major threat causing decline	Conservation action	Assess effectiveness
	Decrease the threat of predation from golden eagles by: (a) Removing golden eagles from the northern channel islands; and (b) Removing feral pigs from Santa Cruz Island so that golden eagles are not sustained or attracted to northern Channel Islands.	Unsuccessful to date, although see (b) below. (a) Eight golden eagles remain on Santa Cruz and Santa Rosa islands. This is larger than the number expected to cause extinction of island foxes in 7–10 years. Golden eagles continue to be the singlemost important threat. (b) This action is proposed to begin being implemented in summer/fall 2004, and will take 4–6 years to complete.

Summary: The island fox population on Santa Cruz Island has decreased by approximately 90% since 1994. Currently, removing golden eagles from the northern Channel Islands is the single-most important recovery action, and these efforts have not been successful to date. Predation by golden eagles continues to be the leading cause of mortality of island foxes in the wild on Santa Cruz Island. Captive breeding and re-introduction programs are expensive. Seventy-five percent of Santa Cruz Island is owned by the Nature Conservancy. Long-term funding is not assured.

TABLE 4.—SUMMARY OF STATUS, MAJOR THREATS, CONSERVATION ACTIONS, AND THEIR EFFECTIVENESS FOR THE SANTA CATALINA ISLAND FOX  
SANTA CATALINA ISLAND FOX

[200 = Number of foxes remaining in wild; 40? = Number of foxes in captivity; 1,200 = Number of foxes in 1998]

Major threat causing decline	Conservation action	Assess effectiveness
Disease .....	Remove/reduce causes of future disease transmission by: (a) Requiring vaccinations for animals coming to the island, (b) Removing feral cats, which act as vectors for disease. Vaccinate wild foxes for canine distemper virus (CDV) Use captive breeding to augment populations .....	These measures have not been implemented, and we don't know how successful they will be ( <i>i.e.</i> , if additional measures are needed).  Effective for strain of CDV that caused decline. Not effective against other strains. Captive breeding was successful in the short term following the decline. Because reproductive rates and survival are currently similar to those in wild, captive breeding is being phased out.

Summary: The island fox population on Santa Catalina Island has decreased by 80%. Two of the symptoms of the threat (*i.e.*, low population numbers, immunity to canine distemper) have been successfully addressed by captive breeding and vaccination of wild foxes from the canine distemper virus. However, the threat of disease itself has not been addressed, and thus the population continues to be susceptible to catastrophic disease outbreaks. This risk is especially heightened now due to the low numbers of Santa Catalina Island foxes relative to historical population sizes. The following three actions need to be implemented in the future to recover the Santa Catalina Island fox: (1) Work with residents of Catalina Island to have pets receive appropriate vaccinations; (2) work with boat concessionaires to require proof of vaccination for any pets coming to the island in the future; and (3) develop educational materials to inform island residents and visitors of the threats to island foxes from disease and measures they can implement to assist in protecting foxes.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that the designation of critical habitat is not prudent when one or both of the following situations exist—(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

In the case of these subspecies, designation of critical habitat would not

be expected to increase the threats to the subspecies and may provide some benefits. The primary regulatory effect of critical habitat is the section 7 requirement that agencies refrain from taking any action that destroys or adversely modifies critical habitat. While a critical habitat designation for habitat currently occupied by this species would not be likely to change the section 7 consultation outcome because an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy to the species, there may be instances where section 7 consultation would be triggered only if critical habitat is designated. Examples could include unoccupied habitat or occupied habitat that may become unoccupied in

the future. Designating critical habitat may also produce some educational or informational benefits. Therefore, designation of critical habitat is prudent for the San Miguel, Santa Rosa, Santa Cruz, and Santa Catalina island foxes.

Because the designation of critical habitat is prudent for the San Miguel, Santa Rosa, Santa Cruz, and Santa Catalina Island foxes, we will under the terms of the settlement in *CBD v. Williams et al.* submit a proposed designation for publication on or by October 1, 2004, followed by a final determination submitted for publication on or by November 1, 2005. Section 4(b)(6)(C)(I) of the ESA states that final listing determinations may be issued without critical habitat designations

when it is essential that such determinations be promptly published.

#### Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages public awareness and results in conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Funding may be available through section 6 of the Act for the State to conduct recovery activities. Recovery planning and implementation, the protection required of Federal agencies and the prohibitions against certain activities involving listed animals are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Subsection 4(f) of the Act requires the Service to develop and implement plans for the conservation of endangered and threatened species ("recovery plans"). The recovery process involves halting or reversing the species' decline by addressing the threats to its survival. The goal of this process is to restore listed species to a point where they are secure, self-sustaining and functioning components of their ecosystems, thus allowing delisting.

Recovery planning, the foundation for species recovery, includes the development of a recovery outline as soon as a species is listed, and later, preparation of draft and final recovery plans, and revision of the plan as significant new information becomes available. The recovery outline—the first step in recovery planning—guides the immediate implementation of urgent recovery actions, and describes the process to be used to develop a recovery plan. The recovery plan identifies site specific management actions that will achieve recovery of the species, measurable criteria that determine when a species may be downlisted or delisted, and methods for monitoring recovery progress. Recovery teams, consisting of species experts, federal and state agencies, non-government organizations, and stakeholders, are

often established to develop recovery plans. When completed, a copy of the recovery outline, draft recovery plan, or final recovery plan will be available from our office (*see ADDRESSES*) or from our website (<http://endangered.fws.gov>).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, non-governmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (restoration of vegetation, hydrology, *etc.*), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on our National Wildlife Refuges, National Forests, National Parks, and other Federal lands. Because many species occur primarily or solely on private lands, achieving recovery of these species requires cooperative conservation efforts on private lands. The island fox occurs primarily on federal land.

The funding for recovery actions can come from a variety of sources, including Federal budgets, State programs, and cost share grants for non-federal landowners, the academic community, and non-governmental organizations. Information on the Service's grant programs that can aid in species recovery can be found at: <http://endangered.fws.gov/grants/index.html>.

The NPS in conjunction with FWS has developed a recovery strategy for island foxes on the northern Channel Islands (Coonan 2003a) that provides the basis for recovery actions on San Miguel, Santa Rosa, and Santa Cruz islands. Essential recovery actions on these islands will likely include: Complete removal of golden eagles, maintenance of captive breeding facilities, keeping a studbook to inform captive breeding pairings, releases of island foxes into the wild, monitoring wild populations, developing and implementing vaccination protocols, and conducting public outreach and education.

On Santa Catalina Island, essential recovery actions will likely include implementing measures to reduce the transmission of canine diseases to the island, vaccinating wild foxes for protection against canine distemper, monitoring wild populations, exploring the role that non-native deer and bison have on island fox habitats, and controlling feral cats to reduce competition and disease transmission risk.

We will be working with the NPS, CDFG, TNC, the Navy, the Catalina Island Conservancy, academic

researchers, private individuals, and environmental groups to implement these recovery actions for the island fox.

Please let us know if you are interested in participating in recovery efforts for the San Miguel, Santa Rosa, Santa Cruz, and Santa Catalina island foxes (*see FOR FURTHER INFORMATION CONTACT*). Additionally, we invite you to submit any further information on the species whenever it becomes available and any information you may have for recovery planning purposes (*see ADDRESSES*).

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service, under section 7(a)(2) of the Act.

San Miguel and Santa Rosa Islands are entirely federally-owned and managed. Although 75 percent of Santa Cruz Island is owned by TNC, the entire island lies within the Channel Islands National Park and Channel Islands National Marine Sanctuary, and TNC and the NPS coordinate many of the resource management activities occurring on the island. Santa Catalina Island is the only island fox locality that does not have substantial Federal involvement. Federal agency actions that may affect the San Miguel, Santa Rosa, Santa Cruz, and Santa Catalina island foxes and may require conference or consultation with us include, but are not limited to, those within the jurisdiction of the U.S. Army Corps of Engineers, the Navy, the NPS, and the National Oceanic and Atmospheric Administration.

The listing of the San Miguel, Santa Rosa, Santa Cruz, and Santa Catalina island foxes as endangered would provide for the development and implementation of a recovery plan for

these taxa. Such a plan will bring together Federal, State, and local efforts for the conservation of these taxa. The plan will establish a framework for agencies to coordinate activities and to cooperate with each other in conservation efforts. The plan will set recovery priorities and estimate the costs of the tasks necessary to accomplish the priorities. It will also describe site-specific management actions necessary to achieve the conservation of the San Miguel, Santa Rosa, Santa Cruz, and Santa Catalina Island foxes. Additionally, pursuant to section 6 of the Act, we would be able to grant funds to the State for management actions promoting the protection and recovery of the San Miguel, Santa Rosa, Santa Cruz, and Santa Catalina Island foxes.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. The prohibitions in section 9(a)(2) of the Act, implemented by 50 CFR 17.21 for endangered species, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Further, it is illegal for any person to attempt to commit, to solicit another person to commit, or to cause to be committed, any of these acts. Certain exceptions apply to our agents and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in the course of otherwise lawful activities. Permits are also available for zoological exhibitions, educational purposes, or special purposes consistent with the purposes of the Act. Requests for copies of the regulations on listed species and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Endangered Species Permits, 911 NE 11th Avenue, Portland, OR 97232-4181 (503/231-2063, facsimile 503/231-6243).

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR

34272), to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of this listing on proposed and ongoing activities within the species' range.

We believe that, based on the best available information, the following actions are not likely to result in a violation of section 9, provided these activities are carried out in accordance with existing regulations and permit requirements:

(1) Possession, delivery, or movement, including interstate transport and import into or export from the United States, involving no commercial activity, of dead specimens of these taxa that were collected prior to the date of publication in the **Federal Register** of a final regulation adding these taxa to the list of endangered species;

(2) Actions that may affect the San Miguel, Santa Rosa, Santa Cruz, or Santa Catalina Island foxes that are authorized, funded, or carried out by a Federal agency, when the action is conducted in accordance with an incidental take statement issued by us under section 7 of the Act;

(3) Actions that may affect the Santa Cruz or Santa Catalina Island foxes that are not authorized, funded, or carried out by a Federal agency, when the action is conducted in accordance with an incidental take permit issued by us under section 10(a)(1)(B) of the Act. To obtain a permit, an applicant must develop a habitat conservation plan and apply for an incidental take permit that minimizes and mitigates impacts to the species to the maximum extent practicable; and

(4) Actions that may affect the San Miguel, Santa Rosa, Santa Cruz, or Santa Catalina Island foxes that are conducted in accordance with the conditions of a section 10(a)(1)(A) permit for scientific research or to enhance the propagation or survival of the species.

We believe that the following actions could result in a violation of section 9; however, possible violations are not limited to these actions alone:

(1) Unauthorized collecting, trapping, capturing, killing, harassing, sale, delivery, or movement, including interstate, and foreign commerce, or harming, or attempting any of these actions, of San Miguel, Santa Rosa, Santa Cruz, or Santa Catalina island foxes without a permit (research activities where San Miguel, Santa Rosa, Santa Cruz, or Santa Catalina Island foxes are trapped or captured will require a permit under section

10(a)(1)(A) of the Endangered Species Act);

(2) The transportation of unvaccinated domestic animals, which transmit diseases or parasites to island foxes, causing serious injury or death on the San Miguel, Santa Rosa, Santa Cruz, or Santa Catalina Islands;

(3) Activities that actually kill or injure a San Miguel, Santa Rosa, Santa Cruz, or Santa Catalina island fox by significantly impairing essential behavioral patterns (such as breeding, feeding or sheltering) through significant habitat modification or degradation (e.g., via excavating, compacting, grading, discing, or removing soil or vegetation) in such a way as to facilitate the introduction or spread of non-native species of plants or that would result in the removal of a den;

(4) Destruction or alteration of San Miguel, Santa Rosa, Santa Cruz, or Santa Catalina Island fox dens, even when seasonally unoccupied when the destruction results in the den no longer being able to be used for breeding purposes; and

(5) Discharges or dumping of toxic chemicals or other pollutants into San Miguel, Santa Rosa, Santa Cruz, or Santa Catalina Island fox habitat, including dens or burrows, that results in death or injury of the species or that results in degradation of their occupied habitat.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to our Ventura Fish and Wildlife Office (see **ADDRESSES** section). Requests for copies of the regulations regarding listed species and inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Endangered Species Permits, 911 NE 11th Avenue, Portland, OR 97232-4181 (503/231-2063; facsimile 503/231-6243).

#### National Environmental Policy Act

We have determined that an Environmental Impact Statement and Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

#### References Cited

A complete list of all references cited herein is available upon request from the Ventura Fish and Wildlife Office (see **ADDRESSES** section).

**Author**

The primary authors of this notice are Bridget Fahey, Ventura Fish and Wildlife Office, and Sandy Vissman, Carlsbad Fish and Wildlife Office (*see ADDRESSES* section).

**List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

**Regulation Promulgation**

■ Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

**PART 17—[AMENDED]**

■ 1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. Section 17.11(h) is amended by adding the following, in alphabetical order under MAMMALS, to the List of Endangered and Threatened Wildlife:

**§ 17.11 Endangered and threatened wildlife.**

\* \* \* \* \*

(h) \* \* \*

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
MAMMALS							
*	*	*	*	*	*		*
Fox, San Miguel Island.	<i>Urocyon littoralis littoralis</i> .	U.S.A. (CA) .....	U.S.A. (CA) .....	E	742	NA	NA
Fox, Santa Catalina Island.	<i>Urocyon littoralis catalinae</i> .	U.S.A. (CA) .....	U.S.A. (CA) .....	E	742	NA	NA
Fox, Santa Cruz Island.	<i>Urocyon littoralis santacruzae</i> .	U.S.A. (CA) .....	U.S.A. (CA) .....	E	742	NA	NA
Fox, Santa Rosa Island.	<i>Urocyon littoralis santarosae</i> .	U.S.A. (CA) .....	U.S.A. (CA) .....	E	742	NA	NA
*	*	*	*	*	*		*

Dated: March 1, 2004.

**Steve Williams,**

*Director, Fish and Wildlife Service.*

[FR Doc. 04–4902 Filed 3–4–04; 8:45 am]

**BILLING CODE 4310–55–P**

# Proposed Rules

Federal Register

Vol. 69, No. 44

Friday, March 5, 2004

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Office of the Secretary

#### 7 CFR Part 16

RIN: 0503-AA27

#### Participation of Religious Organizations in USDA Programs

AGENCY: Office of the Secretary, USDA.

ACTION: Proposed rule.

**SUMMARY:** The United States Department of Agriculture (USDA) is proposing to implement executive branch policy that, within the framework of constitutional church-state guidelines, religious (or "faith-based") organizations should be able to compete on an equal footing with other organizations for USDA assistance. This proposed rule would augment USDA regulations to bring them into compliance with this policy and ensure that USDA assistance programs are implemented in a manner consistent with the requirements of the Constitution, including the religion clauses of the first amendment.

**DATES:** Comments on this notice must be received on or before May 4, 2004.

**ADDRESSES:** Send comments to: Deputy Director, Faith-Based and Community Initiatives, U.S. Department of Agriculture, Office of the Secretary, Room 200A, Washington, DC 20250; electronic mail: [courtenay.mccormick@usda.gov](mailto:courtenay.mccormick@usda.gov).

**FOR FURTHER INFORMATION CONTACT:** Courtenay McCormick, Deputy Director, Faith-Based and Community Initiatives, U.S. Department of Agriculture, Office of the Secretary, Room 200A, Washington, DC 20250; telephone: 202-720-3631 (this is not a toll-free number); electronic mail: [courtenay.mccormick@usda.gov](mailto:courtenay.mccormick@usda.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Faith-based organizations are an important part of the social services network of the United States, offering a

multitude of social services to those in need. In addition to places of worship, faith-based organizations include small nonprofit organizations created to provide one program or multiple services, as well as neighborhood groups formed to respond to a crisis or to lead community renewal. Faith-based groups everywhere, either acting alone or as partners with other service providers and government programs, serve the poor, and help to strengthen families and rebuild communities.

All too often, however, Federal, State, and local governments have not taken full advantage of the partnering possibilities with faith-based organizations, often due to lack of clarity of the parameters for such partnerships. In addition, Federal, State, and local governments have sometimes imposed unwarranted legal or regulatory barriers to the participation of faith-based organizations in government-funded social service programs.

President Bush has directed Federal agencies, including USDA, to take steps to ensure that Federal policy and programs are fully open to faith-based and community organizations in a manner that is consistent with the Constitution. Religious organizations, either acting alone or as partners with other service providers and government programs, revitalize communities, provide community service, and provide children and low-income people access to food, a healthful diet, and nutrition education. The Administration believes that there should be an equal opportunity for all organizations—both religious and nonreligious—to participate in Federal programs.

As part of these efforts, President Bush issued Executive Orders 13279 and 13280 on December 12, 2002. Executive Order 13279, published in the **Federal Register** on December 16, 2002 (67 FR 77141), provides equal protection of the laws for faith-based and community organizations in their relationship with Federal programs. That Executive Order charged the executive branch's agencies, including USDA, to give equal treatment to faith-based and community groups that apply for funds to meet social needs in America's communities. The President called for an end to discrimination against faith-based organizations and,

consistent with the First Amendment to the Constitution, ordered implementation of these policies throughout the executive branch, including, among other things, allowing organizations to retain their religious autonomy over their internal governance and composition of boards, and over their display of religious art, icons, scriptures, or other religious symbols, when participating in government-funded programs. Executive Order 13280, published in the **Federal Register** on December 16, 2002 (67 FR 77145), created a Center for Faith-Based and Community Initiatives in USDA and charged USDA to identify and eliminate regulatory, contracting, and other programmatic barriers to the full participation of faith-based and community organizations in its programs.

The Executive Orders also charged the Federal agencies, including USDA, to ensure that all policies incorporated the principles outlined in Executive Order 13279. This proposed rule is part of USDA efforts to fulfill its responsibilities under these Executive Orders. In addition, this proposed rule is designed to ensure that the implementation of USDA programs is conducted in a manner consistent with the requirements of the Constitution, including the Religion Clauses of the First Amendment.

##### II. This Proposed Rule

###### A. Purpose of Proposed Rule

Consistent with the President's initiative, this proposed rule would revise USDA policy and remove unwarranted barriers to the equal participation of faith-based organizations in USDA grant and cooperative agreement programs ("assistance programs"). The objective of this proposed rule is to ensure that USDA assistance programs are open to all qualified organizations, regardless of their religious character, and to establish clearly the proper uses to which USDA assistance may be put, and the conditions for receipt of USDA assistance.

USDA supports the participation of faith-based organizations in its programs. This proposed rule will clarify, within the framework of constitutional guidelines, that faith-based organizations are able to access and compete on an equal footing with



other eligible organizations in USDA assistance programs. For purposes of defining this universe, this rule will apply to all recipients and subrecipients of USDA assistance covered by 7 CFR parts 3015, 3016, or 3019, the USDA uniform administrative rules for recipients of USDA assistance.

#### *B. Proposed Rule*

##### **1. Participation by Faith-Based Organizations in USDA Assistance Programs**

The proposed rule clarifies that organizations are eligible to participate in USDA assistance programs without regard to their religious character or affiliation, and that organizations may not be excluded from participation in USDA assistance programs simply because they are religious. Specifically, religious organizations are eligible to compete for USDA assistance and to access USDA assistance programs on the same basis, and under the same eligibility requirements, as all other nonprofit organizations. In selecting service providers, the Federal government and State and local governments administering support under USDA assistance programs are prohibited from discriminating for or against organizations on the basis of religion or their religious character. However, nothing in the rule precludes those administering USDA-supported assistance programs from accommodating religious organizations in a manner consistent with the Establishment Clause.

Major international food assistance and development programs of the United States are, by statute, carried out by the United States Agency for International Development (USAID) using the funds and authorities of the Commodity Credit Corporation. This rule encompasses activities of the Corporation that are carried out by the Secretary of Agriculture but does not include those activities of the Corporation carried out by USAID.

##### **2. Inherently Religious Activities**

The proposed rule states that a participating organization may not use USDA direct assistance<sup>1</sup> to support

inherently religious activities, such as worship, religious instruction, or proselytization. If the organization engages in such activities, the activities must be offered separately, in time or location, from the programs or services funded or supported with USDA direct assistance, and participation must be voluntary for the beneficiaries of the program or services funded or supported by USDA. This requirement ensures that USDA direct assistance provided to a participating organization may not be used, for example, to conduct prayer meetings, worship services, or any other activity that is inherently religious.

This restriction does not mean that an organization that receives USDA direct assistance cannot engage in inherently religious activities. It simply means such an organization cannot support these activities with USDA direct assistance. Thus, faith-based organizations that receive USDA direct assistance must take steps to separate, in time or location, their inherently religious activities from the USDA-supported services that they offer.

These restrictions on inherently religious activities do not apply to funds or benefits received from USDA indirectly, such as where USDA funding or benefits are provided to religious organizations as a result of a genuine and independent private choice of a beneficiary (and provided the participating religious organizations otherwise satisfy the requirements of the program). A religious organization may receive such funds as the result of a beneficiary's genuine and independent choice if, for example, a beneficiary redeems a voucher, coupon, certificate, or similar funding mechanism that was provided to that individual using USDA funds or benefits when there is a choice among providers. Such funds or benefits are not "direct" funds within the meaning of the Establishment Clause or "USDA direct assistance" within the meaning of this rule.

##### **3. Independence of Faith-Based Organizations**

The proposed rule clarifies that a religious organization that participates in USDA programs and activities will retain its independence and may continue to carry out its mission, including the definition, practice, and expressions of its religious beliefs, provided that it does not use USDA direct assistance to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations may use space in their facilities to provide USDA-

supported services, without removing religious art, icons, scriptures, or other religious symbols. In addition, a faith-based organization receiving USDA assistance may retain religious terms in its organization's name, select its board members and otherwise govern itself on a religious basis, and include religious references in its organization's mission statements and other governing documents. The proposed rule would also clarify that a faith-based organization's exemption from the federal prohibition on employment discrimination on the basis of religion, set forth in section 702 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-1)—which allows religious organizations to employ individuals of a particular religion without violating Title VII of that Act—is not forfeited when the organization participates in a USDA assistance program. This provision helps enable faith-based groups to promote common values, a sense of community and unity of purpose, and shared experience through service—all of which can contribute to a faith-based organization's effectiveness. It thus helps protect the religious liberties of communities of faith. In keeping with the guarantees of institutional autonomy, the proposed regulation reflects Congress's recognition that a religious organization may determine that, in order to define or carry out its mission, it is important that it be able to take its faith into account in making employment decisions.

##### **4. Nondiscrimination in Providing Assistance**

The proposed rule clarifies that an organization that receives direct assistance from USDA shall not, in providing program assistance, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief. Accordingly, religious organizations, in providing services supported in whole or in part by USDA direct assistance, may not discriminate against current or prospective program beneficiaries on the basis of religion or a religious belief. The purpose of this rulemaking is to eliminate undue administrative barriers that USDA may have imposed to the participation of faith-based organizations in USDA assistance programs; it is not to alter existing statutory requirements, which will continue to apply to USDA assistance programs to the same extent that they applied prior to adoption of this proposed rule in final form.

USDA domestic nutrition programs, including but not limited to those

<sup>1</sup> As used in this proposed rule, the terms "direct USDA assistance" refers to direct funding within the meaning of the Establishment Clause of the First Amendment. For example, direct USDA funding may mean that the government or an intermediate organization with similar duties as a governmental entity under a particular USDA program selects an organization and purchases the needed services straight from the organization. In contrast, indirect funding scenarios may place the choice of service provider in the hands of a beneficiary, and then pay for the cost of that service through a voucher, certificate, or other similar means of payment.

established under the Richard B. Russell National School Lunch Act, 42 U.S.C. 1751 *et seq.*, and the Child Nutrition Act of 1966, 42 U.S.C. 1771 *et seq.*, have long benefited from the strong participation of faith-based and community-based schools and similar organizations delivering healthful foods and nutritious meals to our school children. The Federal funds and commodities used in the delivery of the domestic nutrition programs rely on participating organizations to ensure the benefits reach individuals as the ultimate program beneficiaries.

Supreme Court jurisprudence has long noted that the provision of school lunch assistance to parochial schools is permissible under the Establishment Clause. *See, e.g., Lemon v. Kurtzman*, 403 U.S. 602, 616 (1971). In order to avoid any interpretation of section 16.3(a) that would infringe on admissions policies of religious schools, programs under the National School Lunch Act, the Child Nutrition Act, and international school feeding programs under various authorities available to the Commodity Credit Corporation and USDA are exempt from the provisions of that paragraph.

#### 5. Structures Used for Religious Activities

The proposed rule would also clarify that USDA direct assistance funds may not be used for acquisition, construction, or rehabilitation of structures to the extent that those structures are used for inherently religious activities. USDA direct assistance funds may be used for the acquisition, construction, or rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under specific USDA programs. Where a structure is used for both eligible and inherently religious activities, the proposed rule clarifies that USDA direct assistance funds may not exceed the cost of those portions of the acquisition, construction, or rehabilitation that are attributable to eligible activities. Sanctuaries, chapels and other rooms that a USDA-funded religious organization uses as its principal place of worship, however, are ineligible for USDA-funded improvements. Of course, USDA direct assistance funds may be used for acquisition, construction, or rehabilitation of structures only to the extent authorized by the applicable program statutes and regulations. Disposition of real property after the term of the grant or cooperative agreement, or any change in use of the property during the term of the grant or cooperative agreement, is subject to

government-wide regulations governing real property disposition (*see* 7 CFR parts 3015, 3016, and 3019).

In addition to the restrictions on structures, faith-based organizations, like all other organizations receiving USDA assistance, are subject to restrictions on the use of such funds for equipment, supplies, labor, indirect costs and similar costs of regular maintenance and oversight. USDA assistance may be used only for that portion of these costs that support program activities. For example, if an employee of a faith-based organization is responsible for operating a USDA-funded program and for operating an inherently religious activity, that employee's salary and benefits must be pro-rated based on the amount of their time spent on each activity. The proposed rule clarifies that any laws, regulations, and guidance on the allowable program costs apply to faith-based organizations the same as any other organization.

### III. Findings and Certifications

#### *Executive Order 12866—Regulatory Planning and Review*

The proposed rule is issued in conformance with Executive Order 12866 on Regulatory Planning and Review. The Office of Management and Budget (OMB) has determined that this is a significant regulatory action as defined by Executive Order 12866. Accordingly, OMB has reviewed this proposed rule.

#### *Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This proposed rule does not impose any Federal mandates on any state, local, or tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995.

#### *Executive Order 13132, Federalism*

Executive Order 13132, Federalism, requires that Federal agencies consult with state and local governments and their officials in the development of regulatory policies with federalism implications. Consistent with Executive Order 13132, we specifically solicit comment from state and local government officials on this proposed rule.

#### *Regulatory Flexibility Act*

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C.

605(b)), has reviewed and approved this proposed rule and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. The proposed rule would not impose any new costs, or modify existing costs, applicable to USDA assistance recipients. Rather, the purpose of the proposed rule is to remove policy prohibitions that currently restrict equal participation of faith-based organizations in USDA assistance programs. Notwithstanding the Department's determination that this rule will not have a significant economic effect on a substantial number of small entities, the Department specifically invites comments regarding any less burdensome alternatives to this rule that will meet the Department's objectives as described in this preamble.

#### *Government Paperwork Elimination Act*

USDA is committed to compliance with the Government Paperwork Elimination Act (Pub. L. 105–277), which requires government agencies to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

#### *Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; *see* 5 CFR 1320) requires that the Office of Management and Budget (OMB) approve all collections of information by a Federal agency from the public before they can be implemented. There is no additional information collection burden imposed by this Proposed Rule.

#### **List of Subjects in 7 CFR Part 16**

Administrative practice and procedure, Agriculture, Grant programs, Reporting and recording-keeping requirements.

For the reasons stated in the preamble, USDA proposes to add part 16 of Title 7 of the Code of Federal Regulations as follows:

### **PART 16—PARTICIPATION OF RELIGIOUS ORGANIZATIONS IN USDA PROGRAMS**

- 16.1 Purpose and applicability.
- 16.2 Rights of religious organizations.
- 16.3 Responsibilities of religious organizations.
- 16.4 Effect on State and local funds.
- 16.5 Compliance.

**Authority:** 5 U.S.C. 301; E.O. 13279, 67 FR 77141, 3 CFR, 2002 Comp., p.258; E.O. 13280, 67 FR 77145, 3 CFR, 2002 Comp., p. 262.

**§ 16.1 Purpose and applicability.**

(a) The purpose of this part is to set forth USDA policy regarding equal participation of religious organizations in USDA assistance programs for which non-profit organizations are eligible.

(b) Except as otherwise specifically provided in this part, the policy outlined in this part applies to all recipients and subrecipients of USDA assistance to which 7 CFR parts 3015, 3016, or 3019 apply, and recipients and subrecipients of Commodity Credit Corporation assistance that is administered by agencies of USDA.

**§ 16.2 Rights of religious organizations.**

(a) A religious organization is eligible, on the same basis as any other eligible non-profit organization, to access and participate in USDA assistance programs. Neither the Federal government nor a State or local government receiving USDA assistance shall, in the selection of service providers, discriminate for or against a religious organization on the basis of the organization's religious character or affiliation.

(b) A religious organization that participates in USDA programs will retain its independence and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that it does not use USDA direct assistance to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, a religious organization may:

(1) Use space in its facilities to provide services and programs without removing religious art, icons, scriptures, or other religious symbols,

(2) Retain religious terms in its organization's name,

(3) Select its board members and otherwise govern itself on a religious basis, and

(4) Include religious references in its organizations' mission statements and other governing documents.

(c) In addition, a religious organization's exemption from the Federal prohibition on employment discrimination on the basis of religion, set forth in section 702(a) of the Civil Rights Act of 1964, 42 U.S.C. 2000e-1, is not forfeited when an organization receives USDA assistance.

**§ 16.3 Responsibilities of religious organizations.**

(a) An organization that participates in programs and activities supported by USDA direct assistance programs shall not discriminate against a program beneficiary or prospective program

beneficiary on the basis of religion or religious belief.

(b) Nothing in paragraph (a) shall be construed to prevent religious organizations that receive USDA assistance under the Richard B. Russell National School Lunch Act, 42 U.S.C. 1751 *et seq.*, the Child Nutrition Act of 1966, 42 U.S.C. 1771 *et seq.*, or USDA international school feeding programs from considering religion in their admissions practices.

(c) Organizations that receive direct assistance funds from USDA under any USDA program may not engage in inherently religious activities, such as worship, religious instruction, or proselytization, as part of the programs or services supported with direct assistance from USDA. If an organization conducts such activities, the activities must be offered separately, in time or location, from the programs or services supported with direct assistance from USDA, and participation must be voluntary for beneficiaries of the programs or services supported with such direct assistance. These restrictions on inherently religious activities do not apply where USDA funds or benefits are provided to religious organizations as a result of a genuine and independent private choice of a beneficiary or through other indirect funding mechanisms, provided the religious organizations otherwise satisfy the requirements of the program.

(d)(1) USDA direct assistance funds may not be used for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used by the USDA funding recipients for inherently religious activities. USDA direct assistance funds may be used for the acquisition, construction, or rehabilitation of structures only to the extent that those structures are used for conducting activities and only to the extent authorized by the applicable program statutes and regulations. Where a structure is used for both eligible and inherently religious activities, USDA direct assistance funds may not exceed the cost of those portions of the acquisition, construction, or rehabilitation that are attributable to eligible activities in accordance with the cost accounting requirements applicable to USDA funds. Sanctuaries, chapels, or other rooms that an organization receiving direct assistance funds from USDA uses as its principal place of worship, however, are ineligible for USDA-funded improvements. Disposition of real property after the term of the grant or any change in use of the property during the term of the grant is subject to government-wide

regulations governing real property disposition (*see* 7 CFR parts 3016 and 3019).

(2) Any use of USDA assistance funds for equipment, supplies, labor, indirect costs and the like shall be prorated between the USDA program or activity and any use for other purposes by the religious organization in accordance with applicable laws, regulations, and guidance.

(3) Nothing in this section shall be construed to prevent the residents of housing receiving USDA assistance funds from engaging in religious exercise within such housing.

**§ 16.4 Effect on State and local funds.**

If a State or local government voluntarily contributes its own funds to supplement activities carried out under programs governed by this part, the State or local government has the option to separate out the USDA assistance funds or commingle them. If the funds are commingled, the provisions of this part shall apply to all of the commingled funds in the same manner, and to the same extent, as the provisions apply to the USDA assistance funds.

**§ 16.5 Compliance.**

USDA agencies will monitor compliance with this part in the course of regular oversight of USDA programs.

**Ann M. Veneman,**  
*Secretary of Agriculture.*

[FR Doc. 04-5092 Filed 3-4-04; 8:45 am]

BILLING CODE 3410-90-P

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 39**

[Docket No. 2002-NM-323-AD]

RIN 2120-AA64

**Airworthiness Directives; Boeing Model 737-600, 737-700, 737-700C, 737-800, and 737-900 Series Airplanes**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 737-600, 737-700, 737-700C, 737-800, and 737-900 series airplanes. For certain airplanes, this proposal would require installation of screws and spacers to secure the wire bundles for the aft fuel boost pumps of the main fuel tanks. For certain other

airplanes, this proposal would require a general visual inspection of the wire bundles to determine if the wire bundles are clamped, and/or if they are damaged; further investigation, as applicable; repair of any damage; and installation of applicable brackets, clamps, and spacers to secure the wire bundles. This action is necessary to prevent electrical arcing in a fuel leakage zone, which could result in an uncontrolled fire. This action is intended to address the identified unsafe condition.

**DATES:** Comments must be received by April 19, 2004.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2002-NM-323-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227-1232. Comments may also be sent via the Internet using the following address: [9-anm-nprmcomment@faa.gov](mailto:9-anm-nprmcomment@faa.gov). Comments sent via fax or the Internet must contain "Docket No. 2002-NM-323-AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Doug Pegors, Aerospace Engineer, Propulsion Branch, ANM-140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (425) 917-6504; fax (425) 917-6590.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date

for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002-NM-323-AD." The postcard will be date stamped and returned to the commenter.

**Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2002-NM-323-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

**Discussion**

The FAA has received several reports of chafing of the insulation on the wire bundles that supply power to the aft boost pumps on the main fuel tanks of certain Boeing Model 737 series airplanes. The chafing occurred during deployment of the main landing gear (MLG), when an unsupported length of the wire bundle was buffeted by airflow and chafed rapidly against the adjacent rear spar stiffeners. The chafed wires arced when they came in contact with the rear spar stiffener, which shut down the number 1 or 2 main tank aft boost pump. This chafing was noted on airplanes that had accumulated as few as two and as many as 3,987 total flight

hours. This condition, if not corrected, could result in electrical arcing in a fuel leakage zone, which could result in an uncontrolled fire.

**Explanation of Relevant Service Information**

The FAA has reviewed and approved Boeing Alert Service Bulletin 737-28A1148, Revision 2, dated December 18, 2003. For certain airplanes, this service bulletin describes procedures for installing screws and spacers to secure the applicable wire bundles for the aft fuel boost pumps of the main fuel tanks.

For certain other airplanes, this service bulletin describes procedures for performing an inspection for chafing or other damage; corrective actions (repair of the wire bundle), if necessary; and installation of a new, bracket, clamp, and spacers.

For certain other airplanes, this service bulletin describes procedures for performing an inspection to determine if a clamp secures the wire bundles. If the wire bundle is not clamped, this service bulletin describes procedures for a related investigative action (for chafing or damage of the wire bundle); and for corrective actions. For these airplanes, the corrective actions include repair of any chafed or damaged wire bundles; and installation of a bracket, clamp, and spacers, as applicable, to secure the wire bundles.

Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

**Explanation of Requirements of Proposed Rule**

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

**Cost Impact**

There are approximately 1,284 airplanes of the affected design in the worldwide fleet. The FAA estimates that 527 airplanes of U.S. registry would be affected by this proposed AD. The work hours and required parts per airplane vary according to the configuration group to which the affected airplane belongs.

The following table shows the estimated cost impact for airplanes affected by this proposed AD:

TABLE—COST IMPACT

Airplane configuration group	Work hours per airplane	Labor cost per airplane	Parts cost per airplane	Total cost per airplane
1, 2, 3 and 4 on which the actions described in the initial Service Bulletin have not been accomplished .....	3	\$195	\$292	\$485
1, 2, 3 and 4 on which the actions described in the initial Service Bulletin have been accomplished; 5, 6, and 7 .....	2	\$130	\$3	\$133

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

#### Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

#### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

#### PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

##### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Boeing:** Docket 2002–NM–323–AD.

**Applicability:** Model 737–600, 737–700, 737–700C, 737–800, and 737–900 series airplanes, as listed in Boeing Alert Service Bulletin 737–28A1148, Revision 2, dated December 18, 2003; certificated in any category.

**Compliance:** Required as indicated, unless accomplished previously.

To prevent electrical arcing in a fuel leakage zone, which could result in an uncontrolled fire, accomplish the following:

##### Service Bulletin References

(a) The term “service bulletin,” as used in this AD, means the Accomplishment Instructions of Boeing Alert Service Bulletin 737–28A1148, Revision 2, dated December 18, 2003.

##### Inspection, Installation, and Corrective Actions

(b) For airplanes listed in the service bulletin as Groups 1, 2, 3, and 4 on which Boeing Alert Service Bulletin 737–28A1148, dated September 14, 2000, has been accomplished; or for airplanes listed in the service bulletin as Groups 5, 6 and 7: Within six months after the effective date of this AD, install screws and spacers to secure the applicable wire bundles for the aft fuel boost pumps of the main fuel tanks. Perform all actions per the service bulletin.

(c) For airplanes listed in the service bulletin as Groups 1 and 2 on which Boeing Alert Service Bulletin 737–28A1148, dated September 14, 2000, has not been accomplished: Within six months after the effective date of this AD, perform a general visual inspection of the applicable wire bundles for the aft fuel boost pumps of the main fuel tanks for chafing or other damage. Perform any applicable corrective action; and install a new bracket clamp, and spacers to secure the wire bundles; prior to further flight. Perform all actions per the service bulletin.

(d) For airplanes listed in the service bulletin as Groups 3 and 4 on which Boeing Alert Service Bulletin 737–28A1148, dated September 14, 2000, has not been accomplished: Within six months after the

effective date of this AD, perform a general visual inspection of the applicable wire bundles for the aft fuel boost pumps of the main fuel tanks to determine if the wire bundle is secured with a clamp; and perform any related investigative action, and any applicable corrective actions, prior to further flight. Perform all actions per the service bulletin.

**Note 1:** For the purposes of this AD, a general visual inspection is defined as: “A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.”

##### Actions Accomplished Per Previous Issue of the Service Bulletin

(e) Action accomplished before the effective date of this AD per Boeing Alert Service Bulletin 737–28A1148, Revision 1, dated August 22, 2002, are considered acceptable for compliance with the corresponding action specified in this AD.

##### Alternative Methods of Compliance

(f) In accordance with 14 CFR 39.19, the Manager, Seattle Aircraft Certification Office (ACO), FAA, is authorized to approve alternative methods of compliance (AMOCs) for this AD.

Issued in Renton, Washington, on February 25, 2004.

**Kalene C. Yanamura,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*  
[FR Doc. 04–4931 Filed 3–4–04; 8:45 am]

**BILLING CODE 4910–13–P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 39**

[Docket No. 2003–NM–104–AD]

RIN 2120–AA64

**Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135 and –145 Series Airplanes**

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the superseding of an existing airworthiness directive (AD), applicable to all Model EMB–135 and –145 series airplanes, that currently requires repetitive inspections of the engine thrust reverser stow/transit switches, and corrective action, if necessary. This action would continue to require the existing requirements and would identify the installation of certain new transit switches, which would constitute terminating action for the repetitive inspections. This action would also reduce the applicability. The actions specified by the proposed AD are intended to prevent erroneous signals in the Engine Indicating and Crew Alerting System (EICAS) caused by internal corrosion of the thrust reverser stow/transit switches, which could result in uncommanded loss of engine power in flight, or unnecessary aborted takeoffs on the ground. This action is intended to address the identified unsafe condition.

**DATES:** Comments must be received by April 5, 2004.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–104–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: [9-anm-nprmcomment@faa.gov](mailto:9-anm-nprmcomment@faa.gov). Comments sent via fax or the Internet must contain “Docket No. 2003–NM–104–AD” in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:**

Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:****Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: “Comments to Docket Number 2003–NM–104–AD.” The postcard will be date stamped and returned to the commenter.

**Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–104–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

**Discussion**

On August 13, 2001, the FAA issued AD 2001–17–03, amendment 39–12394 (66 FR 43766, August 21, 2001), applicable to all Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135 and –145 series airplanes, to require repetitive inspections of the engine thrust reverser stow/transit switches, and corrective action, if necessary. That action was prompted by cases of internal corrosion found on the stow/transit switches installed in the engine thrust reversers of EMBRAER Model EMB–145 series airplanes. Erroneous messages of “ENG ( ) REV DISAGREE” or “ENG ( ) REV FAIL” were displayed in the Engine Indicating and Crew Alerting System (EICAS) because of this corrosion. In one case, a transit switch severely contaminated by corrosion resulted in an uncommanded engine rollback to idle in flight. Several cases of aborted takeoffs were also reported due to “ENG ( ) REV DISAGREE” messages during takeoff. The requirements of that AD are intended to prevent erroneous signals in the EICAS caused by internal corrosion of the thrust reverser stow/transit switches, which could result in uncommanded loss of engine power in flight, or unnecessary aborted takeoffs on the ground.

**Actions Since Issuance of Previous Rule**

The preamble to AD 2001–17–03 explains that we considered the requirements “interim action” and were considering further rulemaking. We now have determined that further rulemaking is indeed necessary, and this proposed AD follows from that determination.

**Explanation of Relevant Service Information**

Empresa Brasileira de Aeronautica S.A. (EMBRAER) has issued EMBRAER Service Bulletin 145LEG–78–0006, Revision 01, dated January 31, 2003; and EMBRAER Service Bulletin 145–78–0035, Revision 02, dated January 31, 2003; which describe procedures for replacing certain transit switches with new transit switches having new part numbers.

The Departamento de Aviação Civil (DAC), which is the airworthiness authority for Brazil, approved and recommended these service bulletins

and issued Brazilian Airworthiness Directive 2001-05-03R3, dated April 22, 2003, to ensure the continued airworthiness of these airplanes in Brazil.

#### FAA's Conclusions

These airplane models are manufactured in Brazil and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DAC has kept us informed of the situation described above. We have examined the findings of the DAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

#### Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 2001-17-03 to continue to require repetitive inspections of the engine thrust reverser stow/transit switches, and corrective action, if necessary. The proposed AD also would require installation of new transit switches, which would constitute terminating action for the repetitive inspections required by AD 2001-17-03. The actions would be required to be accomplished in accordance with the service bulletins described previously, except as discussed below.

#### Differences Between the Proposed Rule and the Brazilian AD

This proposed AD would apply to Model EMB-135BJ series airplanes, as listed in EMBRAER Service Bulletin 145LEG-78-0006, Revision 01, dated January 31, 2003; and Model EMB-135 and -145 series airplanes as listed in EMBRAER Service Bulletin 145-78-0035, Revision 02, dated January 31, 2003; certificated in any category. The Brazilian AD applies to "all EMBRAER EMB-145 and EMB-135 aircraft models in operation." We find that a reference to the applicability in the service bulletins is more specific regarding which airplane serial numbers are affected by this proposed AD.

This proposed AD would require installing new transit switches, which would terminate the repetitive inspections. The Brazilian airworthiness directive provides the terminating action as an option. We can better

ensure long-term continued operational safety by design changes to remove the source of the problem, rather than by repetitive inspections. Long-term inspections may not provide the degree of safety necessary for the transport airplane fleet. This determination, along with a better understanding of the human factors associated with numerous continual inspections, has led us to consider placing less emphasis on inspections and more emphasis on design improvements. The proposed installation requirement is consistent with these conditions.

#### Explanation of Change to Applicability

While AD 2001-17-03 applied to all EMBRAER Model EMB-135 and -145 series airplanes, this proposed AD would apply only to airplanes of certain serial numbers as specified in the EMBRAER service bulletins. The airplane serial numbers that are eliminated from the applicability of this proposed AD have an equivalent modification that is factory-incorporated.

#### Cost Impact

There are approximately 365 airplanes of U.S. registry that would be affected by this proposed AD.

The inspections that are currently required by AD 2001-17-03 take approximately 1 work hour per airplane to accomplish, at an average labor rate of \$65 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be \$23,725, or \$65 per airplane, per inspection cycle.

The new actions that are proposed in this AD action would take approximately 2 work hours per airplane to accomplish, at an average labor rate of \$65 per work hour. Required parts would cost approximately \$194 per airplane. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators is estimated to be \$118,260, or \$324 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

#### Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

#### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

#### PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

#### § 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39-12394 (66 FR 43766, August 21, 2001), and by adding a new airworthiness directive (AD), to read as follows:

**Empresa Brasileira De Aeronautica S.A. (EMBRAER):** Docket 2003-NM-104-AD. Supersedes AD 2001-17-03, Amendment 39-12394.

**Applicability:** Model EMB-135BJ series airplanes, as listed in EMBRAER Service Bulletin 145LEG-78-0006, Revision 01, dated January 31, 2003; and Model EMB-135 and -145 series airplanes, as listed in EMBRAER Service Bulletin 145-78-0035, Revision 02, dated January 31, 2003; certificated in any category.

**Compliance:** Required as indicated, unless accomplished previously.



To prevent erroneous signals in the Engine Indicating and Crew Alerting System (EICAS) caused by internal corrosion of the thrust reverser stow/transit switches, which could result in uncommanded loss of engine power in flight, or unnecessary aborted takeoffs on the ground, accomplish the following:

#### Restatement of the Requirements of AD 2001-17-03

##### *Initial and Repetitive Inspections, and Corrective Action, if Necessary*

(a) For Model EMB-135 and -145 series airplanes: Prior to the accumulation of 2,000 total flight hours, or within 400 flight hours after September 5, 2001 (the effective date of AD 2001-17-03, amendment 39-12394), whichever occurs later, perform the inspection required by paragraph (b) of this AD and repeat the inspection at intervals not to exceed 1,200 flight hours.

(b) For Model EMB-135 and -145 series airplanes: Inspect each of the six stow/transit switches on the #1 and #2 engine thrust reversers by conducting a megohmmeter test to measure insulation resistance according to the Accomplishment Instructions of EMBRAER Service Bulletin 145-78-0029, dated February 2, 2001. If insulation resistance measures 100 megohms or less, before further flight, replace the switch with a new switch in accordance with the service bulletin.

##### *Spares*

(c) For Model EMB-135 and -145 series airplanes: As of September 5, 2001, no person shall install, on any airplane, a stow/transit switch part number 83-990-137 or 83-990-152 unless it has been inspected in accordance with this AD.

#### New Actions Required by This AD

##### *Service Bulletin Reference*

(d) The term "service bulletin," as used in the remainder of this AD, means the Accomplishment Instructions of the following service bulletins, as applicable:

(1) For Model EMB-135BJ series airplanes: EMBRAER Service Bulletin 145LEG-78-0006, Revision 01, dated January 31, 2003; and

(2) For Model EMB-135 and -145 series airplanes: EMBRAER Service Bulletin 145-78-0035, Revision 02, dated January 31, 2003.

##### *Terminating Action*

(e) Install new transit switches having part number 83-990-168, on both engines of the airplane, at the time indicated in paragraph (e)(1) or (e)(2), as applicable, in accordance with the applicable service bulletin. Accomplishment of the new part installation constitutes terminating action for the inspections required by paragraph (a) of this AD.

(1) For airplanes that have accomplished the inspection required by paragraph (a) of this AD: Within 1,200 flight hours from the completion of the last inspection required by paragraph (a) of this AD that was performed before the effective date of this AD, or within 400 flight hours after the effective date of this AD, whichever occurs later.

(2) For airplanes that have not accomplished any inspection required by paragraph (a) of this AD: Prior to the accumulation of 2,000 total flight hours, or within 400 hours after the effective date of this AD, whichever occurs later.

##### *Actions Accomplished Per Previous Issue of Service Bulletin*

(f) Installation of new transit switches having part number 83-990-168 on both engines of the airplane accomplished before the effective date of this AD, in accordance with EMBRAER Service Bulletin 145-78-0035, dated October 4, 2002; EMBRAER Service Bulletin 145-78-0035, Revision 01, dated December 11, 2002; or EMBRAER Service Bulletin 145LEG-78-0006, dated January 13, 2003; is considered acceptable for compliance with the terminating action required by paragraph (e) of this AD.

##### *Alternative Methods of Compliance*

(g) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM-116, FAA, Transport Airplane Directorate, is authorized to approve alternative methods of compliance for this AD.

**Note 1:** The subject of this AD is addressed in Brazilian airworthiness directive 2001-05-03R3, dated April 22, 2003.

Issued in Renton, Washington, on February 23, 2004.

**Ali Bahrami,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 04-4930 Filed 3-4-04; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 2003-NM-218-AD]

**RIN 2120-AA64**

#### **Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB-135BJ and EMB-145XR Series Airplanes**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain EMBRAER Model EMB-135BJ and EMB-145XR series airplanes. This proposal would require repetitive inspections for cracking in the firewall of the auxiliary power unit (APU), and repair of the firewall if necessary. This proposal would also provide an optional terminating action for the repetitive inspections. This action is necessary to detect and correct cracking in the APU

firewall, which could result in reduced structural integrity of the firewall, and a consequent uncontained APU fire that could spread to the airplane structure. This action is intended to address the identified unsafe condition.

**DATES:** Comments must be received by April 5, 2004.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2003-NM-218-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227-1232. Comments may also be sent via the Internet using the following address: [9-anm-nprmcomment@faa.gov](mailto:9-anm-nprmcomment@faa.gov). Comments sent via fax or the Internet must contain "Docket No. 2003-NM-218-AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), PO Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

#### **FOR FURTHER INFORMATION CONTACT:**

Todd Thompson, Aerospace Engineer, International Branch, ANM-116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-1175; fax (425) 227-1149.

#### **SUPPLEMENTARY INFORMATION:**

##### **Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a



request to change the service bulletin reference as two separate issues.

- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2003-NM-218-AD." The postcard will be date stamped and returned to the commenter.

#### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2003-NM-318-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

#### Discussion

The Departamento de Aviação Civil (DAC), which is the airworthiness authority for Brazil, notified the FAA that an unsafe condition may exist on certain EMBRAER EMB-135BJ and EMB-145XR series airplanes. The DAC advises that it has received reports of cracking in the firewall of the auxiliary power unit (APU). The cracking was caused by differential pressure between the inside and outside of the APU compartment. Such cracking, if not detected and corrected, could result in reduced structural integrity of the firewall and a consequent uncontained APU fire that could spread to the airplane structure.

#### Explanation of Relevant Service Information

EMBRAER has issued Service Bulletins 145-53-0037 (for Model EMB-145XR series airplanes), dated April 30, 2003; and 145LEG-53-0010 (for Model EMB-135BJ series airplanes), dated June 5, 2003. These service bulletins describe procedures for repetitively inspecting the APU firewall for cracking, and repairing the APU firewall if necessary.

The service bulletins specify that if any crack is found it should be repaired per the applicable structural repair manual (SRM). If any crack is found that exceeds the limits specified in the applicable SRM, a new APU firewall should be installed per Part II of the service bulletin. Replacement of the APU firewall with a new part would eliminate the need for the repetitive inspections. The service bulletins also describe procedures for doing an operational test each time an APU firewall is replaced. Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition. The DAC classified these service bulletins as mandatory and issued Brazilian airworthiness directive 2003-07-02, dated August 18, 2003, to ensure the continued airworthiness of these airplanes in Brazil.

#### FAA's Conclusions

These airplane models are manufactured in Brazil and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DAC has kept us informed of the situation described above. We have examined the findings of the DAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

#### Explanation of Requirements of Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Consistent with the findings of the DAC, the proposed AD would allow repetitive inspections to continue in lieu of the terminating action. In making this determination, we considered that long-term continued operational safety in this case will be adequately ensured by repetitive inspections to detect cracking in the APU firewall before it represents a hazard to the airplane.

#### Clarification of Repair Information

If any cracking exceeds the limits specified in the service bulletin, the APU firewall must be replaced with a new APU firewall per the

Accomplishment Instructions of the applicable service bulletin.

#### Cost Impact

We estimate that 40 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 1 work hour per airplane to accomplish the proposed repetitive inspections, at an average labor rate of \$65 per work hour. Based on these figures, the cost impact of the proposed repetitive inspections on U.S. operators is estimated to be \$2,600, or \$65 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

If an operator chooses to do the optional terminating action, rather than continue the repetitive inspections, it would take about 60 work hours per airplane to accomplish the replacement of the APU firewall, at an average labor rate of \$65 per work hour. Required parts would cost about \$7,784 per airplane. Based on these figures, we estimate the cost of this optional terminating action to be \$11,684 per airplane.

#### Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this

action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

#### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

#### PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

##### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

#### **Empresa Brasileira De Aeronautica S.A. (EMBRAER):** Docket 2003–NM–218–AD.

**Applicability:** Model EMB–135BJ series airplanes as listed in EMBRAER Service Bulletin 145LEG–53–0010, dated June 5, 2003; and Model EMB–145XR series airplanes as listed in EMBRAER Service Bulletin 145–53–0037, dated April 30, 2003; certificated in any category.

**Compliance:** Required as indicated, unless accomplished previously.

To detect and correct cracking in the firewall of the auxiliary power unit (APU), which could result in reduced structural integrity of the firewall, and a consequent uncontained APU fire that could spread to the airplane structure, accomplish the following:

#### **Initial Inspection**

(a) Within 200 flight hours or 90 days after the effective date of this AD, whichever is first: Do a detailed inspection of the APU firewall for cracking, per Part I of the Accomplishment Instructions of EMBRAER Service Bulletin 145–53–0037 (for Model EMB–145XR series airplanes), dated April 30, 2003; or Service Bulletin 145LEG–53–0010 (for Model EMB–135BJ series airplanes), dated June 5, 2003; as applicable.

**Note 1:** For the purposes of this AD, a detailed inspection is defined as: “An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.”

#### **Repetitive Inspections/Repair**

(b) If no cracking is found during any inspection required by paragraph (a) of this AD: Repeat the inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 200 flight hours or 90 days, whichever is first. Accomplishment of the replacement specified in paragraph (d) of this AD terminates the repetitive inspections required by this paragraph.

(c) If any cracking is found during any inspection required by paragraph (a) of this AD: Before further flight, determine if the cracking can be repaired per Part I of the Accomplishment Instructions of EMBRAER Service Bulletin 145–53–0037, dated April 30, 2003; or Service Bulletin 145LEG–53–0010, dated June 5, 2003; as applicable.

(1) If the cracking can be repaired: Before further flight, repair the cracking per Part I of the Accomplishment Instructions of the applicable service bulletin. Repeat the inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 200 flight hours or 90 days, whichever is first.

(2) If the cracking cannot be repaired: Before further flight, replace the APU firewall with a new firewall by accomplishing all of the actions per Part II of the Accomplishment Instructions of the applicable service bulletin. Accomplishment of the replacement terminates the repetitive inspections required by paragraphs (b) and (c)(1) of this AD.

#### **Optional Terminating Action**

(d) Replacement of the APU firewall with a new firewall by accomplishing all of the actions per Part II of the Accomplishment Instructions of EMBRAER Service Bulletin 145–53–0037, dated April 30, 2003; or 145LEG–53–0010, dated June 5, 2003; as applicable; constitutes terminating action for the repetitive inspections required by paragraphs (b) and (c)(1) of this AD.

#### **Alternative Methods of Compliance**

(e) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, is authorized to approve alternative methods of compliance for this AD.

**Note 2:** The subject of this AD is addressed in Brazilian airworthiness directive 2003–07–02, dated August 18, 2003.

Issued in Renton, Washington, on February 20, 2004.

**Kalene C. Yanamura,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*  
[FR Doc. 04–4929 Filed 3–4–04; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 2002–NM–263–AD]

RIN 2120–AA64

#### **Airworthiness Directives; Boeing Model 767–200, –300, and –300F Series Airplanes**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Boeing Model 767–200, –300, and –300F series airplanes. This proposal would require inspections to detect cracking or corrosion of the fail-safe straps between the side fitting of the rear spar bulkhead at body station 955 and the skin; and follow-on/corrective actions. This action is necessary to detect and correct fatigue cracking or corrosion of the fail-safe straps, which could result in cracking of adjacent structure and consequent reduced structural integrity of the fuselage. This action is intended to address the identified unsafe condition.

**DATES:** Comments must be received by April 19, 2004.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–263–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: [9-anm-nprmcomment@faa.gov](mailto:9-anm-nprmcomment@faa.gov). Comments sent via fax or the Internet must contain “Docket No. 2002–NM–263–AD” in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:**

Suzanne Masterson, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 917-6441; fax (425) 917-6590.

**SUPPLEMENTARY INFORMATION:****Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002-NM-263-AD." The postcard will be date stamped and returned to the commenter.

**Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2002-NM-263-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

**Discussion**

The FAA has received reports of cracked and/or corroded fail-safe straps

at body station (BS) 955 on Boeing Model 767-200 series airplanes. The airplane manufacturer has found that such fatigue cracking is due to residual tension in the fail-safe strap. Fatigue cracking or corrosion of the fail-safe straps between the side fitting of the rear spar bulkhead at BS 955 and the skin, if not detected and corrected, could result in cracking of adjacent structure and consequent reduced structural integrity of the fuselage.

The fail-safe strap on certain Model 767-300 and -300F series airplanes are identical to those on the affected Model 767-200 series airplanes. Therefore, all of these models may be subject to the same unsafe condition.

**Explanation of Relevant Service Information**

The FAA has reviewed and approved Boeing Alert Service Bulletin 767-53A0100, dated September 26, 2002. The service bulletin describes procedures for an initial detailed inspection and eddy current inspection to detect cracking or corrosion of the fail-safe straps between the side fitting of the rear spar bulkhead at BS 955 and the skin; and follow-on/corrective actions. The follow-on/corrective actions include performing repetitive detailed and eddy current inspections or contacting Boeing for repair and repeat inspection information, as applicable.

**Explanation of Requirements of Proposed Rule**

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

**Differences Between Proposed Rule and Service Bulletin**

We have determined to simplify the complex compliance time specified in the service bulletin in order to reduce potential confusion and inadvertent non-compliances. We find that a compliance time of "prior to the accumulation of 15,000 total flight cycles, or within 3,000 flight cycles after the effective date of the AD, whichever occurs later" will provide an acceptable level of safety.

Operators should note that, although the service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, this proposal would require the repair of those conditions to be accomplished per a method approved by the FAA.

**Interim Action**

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

**Cost Impact**

There are approximately 833 airplanes of the affected design in the worldwide fleet. The FAA estimates that 354 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed inspections, and that the average labor rate is \$65 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be \$46,020, or \$130 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

**Regulatory Impact**

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

**PART 39—AIRWORTHINESS DIRECTIVES**

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Boeing:** Docket 2002–NM–263–AD.

**Applicability:** All Model Boeing Model 767–200, –300, and –300F series airplanes, certificated in any category.

**Compliance:** Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking or corrosion of the fail-safe straps between the side fitting of the rear spar bulkhead at body station (BS) 955 and the skin, which could result in cracking of adjacent structure and consequent reduced structural integrity of the fuselage, accomplish the following:

**Inspections and Follow-On/Corrective Actions**

(a) Except as provided by paragraph (b) of this AD, prior to the accumulation of 15,000 total flight cycles, or within 3,000 flight cycles after the effective date of this AD, whichever occurs later, perform a detailed inspection and eddy current inspection to detect cracking or corrosion of the fail-safe straps between the side fitting of the rear spar bulkhead at BS 955 and the skin, per Figure 2 of the Accomplishment Instructions of Boeing Alert Service Bulletin 767–53A0100, dated September 26, 2002.

**Note 1:** For the purposes of this AD, a detailed inspection is defined as: “An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.”

(1) If no crack or corrosion is found, repeat the inspections thereafter at intervals not to exceed 6,000 flight cycles or 36 months, whichever occurs first.

(2) If any crack or corrosion is found, before further flight, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or a Boeing Company Designated Engineering

Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved, the approval must specifically reference this AD.

(b) For airplanes that have replaced the failsafe strap before the effective date of this AD: Do the actions required by paragraph (a) of this AD within 12,000 flight cycles after accomplishing the replacement.

**Alternative Methods of Compliance**

(c)(1) In accordance with 14 CFR 39.19, the Manager, Seattle ACO, FAA, is authorized to approve alternative methods of compliance (AMOCs) for this AD.

(2) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings.

Issued in Renton, Washington, on February 26, 2004.

**Kalene C. Yanamura,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*  
[FR Doc. 04–4928 Filed 3–4–04; 8:45 am]

**BILLING CODE 4910–13–P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 39**

[Docket No. 2002–NM–237–AD]

**RIN 2120–AA64**

**Airworthiness Directives; McDonnell Douglas Model DC–10–30 Airplane**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD), applicable to a certain McDonnell Douglas Model DC–10–30 airplane. The proposal would require an inspection of the power feeder cable assembly of the auxiliary power unit (APU) for chafing, correct type of clamps, and proper clamp installation; and corrective actions, if necessary. This action is necessary to prevent the loss of the APU generator due to chafing of the generator power feeder cables, and consequent electrical arcing and smoke/fire in the APU compartment. This action is intended to address the identified unsafe condition.

**DATES:** Comments must be received by April 19, 2004.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport

Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–237–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain “Docket No. 2002–NM–237–AD” in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

**FOR FURTHER INFORMATION CONTACT:**

Natalie Phan-Tran, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5343; fax (562) 627–5210.

**SUPPLEMENTARY INFORMATION:****Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.

- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002-NM-237-AD." The postcard will be date stamped and returned to the commenter.

#### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2002-NM-237-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

#### Background

In July 1996, a Boeing Model 747 series airplane was involved in an accident. As part of re-examining all aspects of the service experience of the airplane involved in the accident, the FAA participated in design review and testing to determine possible sources of ignition in center fuel tanks. As part of the review, we examined fuel system wiring with regard to the possible effects that wire degradation may have on arc propagation.

In 1997 in a parallel proceeding, at the recommendation of the White House Commission on Aviation Safety and Security, the FAA expanded its Aging Transport Program to include non-structural systems and assembled a team for evaluating these systems. This team performed visual inspections of certain transport category airplanes for which 20 years or more had passed since date of manufacture. In addition, the team gathered information from interviews with FAA Principal Maintenance Inspectors and meetings with representatives of airplane manufacturers. This evaluation revealed that the length of time in service is not the only cause of wire degradation; inadequate maintenance, contamination, improper repair, and mechanical damage are all contributing factors. From the compilation of this comprehensive information, we developed the Aging Transport Non-

Structural Systems Plan to increase airplane safety by increasing knowledge of how non-structural systems degrade and how causes of degradation can be reduced.

In 1998, an accident occurred off the coast of Nova Scotia involving a McDonnell Douglas Model MD-11 series airplane. Investigation indicates that a fire broke out in the cockpit and first class overhead area. Although the ignition source of the fire has not been determined, the FAA, in conjunction with Boeing and operators of Model MD-11, DC-8, DC-9, DC-10, and DC-9-80 series airplanes, is reviewing all aspects of the service history of those airplanes to identify potential unsafe conditions associated with wire degradation due to various contributing factors (e.g., inadequate maintenance, contamination, improper repair, and mechanical damage) and to take appropriate corrective actions. This proposed airworthiness directive (AD) is one of a series of corrective actions identified during that process.

In 1999, the FAA Administrator established a formal advisory committee to facilitate the implementation of the Aging Transport Non-Structural Systems Plan. This committee, the Aging Transport Systems Rulemaking Advisory Committee (ATSRAC), is made up of representatives of airplane manufacturers, operators, user groups, aerospace and industry associations, and government agencies. As part of its mandate, ATSRAC will recommend rulemaking to increase transport category airplane safety in cases where solutions to safety problems connected to aging systems have been found and must be applied. Detailed analyses of certain transport category airplanes that have been removed from service, studies of service bulletins pertaining to certain wiring systems, and reviews of previously issued ADs requiring repetitive inspections of certain wiring systems, have resulted in valuable information on the cause and prevention of wire degradation due to various contributing factors (e.g., inadequate maintenance, contamination, improper repair, and mechanical damage).

In summary, as a result of the investigations described above, the FAA has determined that corrective action may be necessary to minimize the potential hazards associated with wire degradation and related causal factors (e.g., inadequate maintenance, contamination, improper repair, and mechanical damage).

#### Identification of Unsafe Condition

The FAA has received a report of a generator power feeder cable of the auxiliary power unit (APU) chafing and shorting against adjacent structure on a McDonnell Douglas Model DC-10 airplane. Investigation revealed the cause of such chafing and arcing to be installation of an incorrect cable clamp and improperly positioned clamp during manufacturing. These conditions, if not corrected, could result in loss of the APU generator due to chafing of the generator power feeder cables and consequent electrical arcing and smoke/fire in the APU compartment.

#### Similar Airplanes

The power feeder cable assemblies of the APUs on certain McDonnell Douglas Model MD-10-10F airplanes are identical to those on the affected Model DC-10 airplane. Therefore, all of these models may be subject to the same unsafe condition.

#### AD 2001-24-22, Amendment 39-12539

On November 28, 2001, the FAA issued AD 2001-24-22, amendment 39-12539 (66 FR 64119, December 12, 2001), applicable to certain McDonnell Douglas Model DC-10-10, -10F, -30, -30F (KC-10A and KDC-10), -40, and -40F airplanes; and Model MD-10-10F airplanes, to require an inspection of the power feeder cable assembly of the auxiliary power unit (APU) for chafing, correct type of clamps, and proper clamp installation; and corrective actions, if necessary. The requirements of that AD are intended to prevent loss of the APU generator due to chafing of the generator power feeder cables, and consequent electrical arcing and smoke/fire in the APU compartment. That action was intended to address the identified unsafe condition.

#### Actions Since Issuance of Previous Rule

Since issuance of that AD, the FAA was advised that one Model DC-10-30 airplane (fuselage number 0106) was excluded inadvertently from the effectivity of Section 1.A. of Boeing Alert Service Bulletin DC10-24A137, Revision 01, dated May 31, 2001, which is referenced in the applicability of AD 2001-24-22 as the appropriate source for determining the affected airplane fuselage numbers. Therefore, the additional airplane is also subject to the same unsafe condition addressed in AD 2001-24-22.

#### Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin DC10-

24A137, Revision 02, dated October 15, 2001, which describes procedures that are essentially the same as those procedures included in Boeing Alert Service Bulletin DC10–24A137, Revision 01, dated May 31, 2001. This revision also adds an additional airplane fuselage number to the effectivity. No more work is necessary on airplanes changed as shown in Revision 01 of the service bulletin. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Accomplishment of the actions specified in AD 2001–24–22 is acceptable for compliance with the requirements of this proposed AD.

### Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Since this proposed AD would expand the applicability of AD 2001–24–22, the FAA has considered a number of factors in determining whether to issue a new AD or to supersede the existing AD. The FAA has considered the entire fleet size that would be affected by superseding AD 2001–24–22 and the consequent workload associated with revising maintenance record entries. In light of this, the FAA has determined that a less burdensome approach is to issue a separate AD applicable only to the additional airplane. This proposed AD would not supersede AD 2001–24–22; airplanes listed in the applicability of AD 2001–24–22 are required to continue to comply with the requirements of that AD. This proposed AD is a separate AD action, and is applicable to only one McDonnell Douglas Model DC–10–30 airplane (fuselage number 0106), certificated in any category.

### Cost Impact

The FAA estimates that 1 Model DC–10–30 airplane, having fuselage number 0106, of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspection, and that the average labor rate is \$65 per work hour. Based on these figures, the cost impact of the proposed inspection on U.S. operators is estimated to be \$65.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the current or proposed requirements of

this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

### Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption

### ADDRESSES.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

### PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

#### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**McDonnell Douglas:** Docket 2002–NM–237–AD.

**Applicability:** Model DC–10–30 airplane, fuselage number 0106; certificated in any category.

**Compliance:** Required as indicated, unless accomplished previously.

To prevent the loss of the auxiliary power unit (APU) generator due to chafing of the generator power feeder cables, and consequent electrical arcing and smoke/fire in the APU compartment, accomplish the following:

### Inspection and Corrective Action(s), if Necessary

(a) Within 12 months after the effective date of this AD, do a general visual inspection of the power feeder cable assembly of the APU for chafing, correct type (including part number) of clamps, and proper clamp installation, per Boeing Alert Service Bulletin DC10–24A137, Revision 02, dated October 15, 2001.

**Note 1:** For the purposes of this AD, a general visual inspection is defined as: “A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.”

(1) Condition 1. If no signs of wire chafing are found, and all clamps are of the correct type (including the correct part number) and are installed properly, no further action is required by this AD.

(2) Condition 2. If any wire chafing, incorrect type of any clamp (including incorrect part number), or improper clamp installation is found, before further flight, do the applicable corrective action(s) (e.g., repair, replace, and modify discrepant part) per the Accomplishment Instructions of the service bulletin.

### Actions Accomplished Per Previous Issues of Service Bulletin

(b) Accomplishment of the inspection and any applicable corrective actions, per Boeing Service Bulletin DC10–24–137, dated September 15, 1987, or Boeing Alert Service Bulletin DC10–24A137, Revision 01, dated May 31, 2001, before the effective date of this AD, is considered acceptable for compliance with the requirements of this AD.

### Accomplishment of the Actions per AD 2001–24–22

(c) Accomplishment of the actions specified in AD 2001–24–22, amendment 39–12539, is acceptable for compliance with the requirements of this AD.

### Alternative Methods of Compliance

(d) In accordance with 14 CFR 39.19, the Manager, Los Angeles Aircraft Certification Office, FAA, is authorized to approve alternative methods of compliance for this AD.

Issued in Renton, Washington, on February 25, 2004.

**Kalene C. Yanamura,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 04-4927 Filed 3-4-04; 8:45 am]

BILLING CODE 4910-13-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 2003-NM-272-AD]

RIN 2120-AA64

#### **Airworthiness Directives; Airbus Models A330-202, -203, -223, -243, and -300 Series Airplanes**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A330-202, -203, -223, -243, and -300 series airplanes. This proposal would require modification of the control box of the auxiliary power unit (APU). This action is necessary to prevent uncommanded in-flight shutdown of the APU, which could result in loss of critical electrical systems when the airplane is operated in emergency electrical configuration, and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

**DATES:** Comments must be received by April 5, 2004.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2003-NM-272-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227-1232. Comments may also be sent via the Internet using the following address: [9-anm-nprmcomment@faa.gov](mailto:9-anm-nprmcomment@faa.gov). Comments sent via fax or the Internet must contain "Docket No. 2003-NM-272-AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Tim Backman, Aerospace Engineer, International Branch, ANM-116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2797; fax (425) 227-1149.

#### **SUPPLEMENTARY INFORMATION:**

##### **Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2003-NM-272-AD." The postcard will be date stamped and returned to the commenter.

##### **Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the

FAA, Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2003-NM-272-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

##### **Discussion**

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A330 series airplanes. The DGAC advises that, during flight tests done in the electrical emergency configuration, two auxiliary power unit (APU) shutdowns occurred on Honeywell GTCP Model APUs, and electrical power was lost. The reason for the shutdowns was the loss of in-flight signal information, which caused the APU fuel program to switch from "in-flight" operations to "on-ground" operations, and increased the APU speed until the overspeed limit was reached. Uncommanded in-flight shutdown of the APU could result in loss of critical electrical systems when the airplane is operated in emergency electrical configuration, and consequent reduced controllability of the airplane.

##### **Explanation of Relevant Service Information**

Airbus has issued Service Bulletin A330-49-3025, dated June 11, 2003, which describes procedures for modification of the control box of the APU. The modification involves installation of a decoupling diode (62KD) in the control box (5000VE) of the APU, between pin X2 of the ground supply relay SKD and pin -F of connector 5112VC. The service bulletin also describes procedures for a continuity test to check the polarity of the diode after installation. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive 2003-350(B), dated September 17, 2003, to ensure the continued airworthiness of these airplanes in France.

##### **FAA's Conclusions**

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept us informed of the situation described above. We have examined the findings of the DGAC,



reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

#### Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

#### Cost Impact

We estimate that 9 airplanes of U.S. registry would be affected by this proposed AD, that it would take about 1 work hour per airplane to do the proposed actions, and that the average labor rate is \$65 per work hour. Required parts would cost about \$140 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be \$1,845, or \$205 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

#### Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft

regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

#### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

#### PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

##### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Airbus:** Docket 2003–NM–272–AD.

*Applicability:* Model A330–202, –203, –223, –243, and –300 series airplanes; certificated in any category; on which Airbus Modification 50245 has not been done (reference Airbus Service Bulletin A330–49–3025, dated June 11, 2003, in service).

*Compliance:* Required as indicated, unless accomplished previously.

To prevent uncommanded in-flight shutdown of the auxiliary power unit (APU), which could result in loss of critical electrical systems when the airplane is operated in emergency electrical configuration, and consequent reduced controllability of the airplane, accomplish the following:

(a) Within 12 months after the effective date of this AD: Modify APU control box 5000VE by doing all the actions per the Accomplishment Instructions of Airbus Service Bulletin A330–49–3025, dated June 11, 2003.

#### Alternative Methods of Compliance

(b) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, is authorized to approve alternative methods of compliance for this AD.

**Note 1:** The subject of this AD is addressed in French airworthiness directive 2003–350(B), dated September 17, 2003.

Issued in Renton, Washington, on February 25, 2004.

**Kalene C. Yanamura,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*  
[FR Doc. 04–4926 Filed 3–4–04; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 2002–NM–259–AD]

RIN 2120–AA64

#### Airworthiness Directives; Saab Model SAAB 2000 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Saab Model SAAB 2000 series airplanes. This proposal would require an inspection of roll and pitch disconnect handles for spring forces outside limits, and adjustment of the spring force of the handles, if necessary. This action is necessary to prevent the roll and pitch disconnect handles from being difficult to operate, which could result in an increase in pilot workload and subsequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

**DATES:** Comments must be received by April 5, 2004.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–259–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: [9-anm-nprmcomment@faa.gov](mailto:9-anm-nprmcomment@faa.gov). Comments sent via fax or the Internet must contain "Docket No. 2002–NM–259–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Rosanne Ryburn, Aerospace Engineer,



International Branch, ANM-116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2139; fax (425) 227-1149.

#### **SUPPLEMENTARY INFORMATION:**

##### **Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002-NM-259-AD." The postcard will be date stamped and returned to the commenter.

##### **Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2002-NM-259-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

##### **Discussion**

The Luftfartsverket (LFV), which is the airworthiness authority for Sweden, notified the FAA that an unsafe condition may exist on certain Saab

Model SAAB 2000 series airplanes. The LFV advises that there have been two instances during C-checks in which the roll and pitch disconnect handles were difficult to operate. An abnormal force is needed to pull the handles. This condition, if not corrected, could result in an increase in pilot workload and subsequent reduced controllability of the airplane.

##### **Explanation of Relevant Service Information**

Saab has issued Service Bulletin 2000-27-047, dated August 30, 2002, which describes procedures for inspection of the roll and pitch disconnect handles for difficult operation, and adjustment of the handles, if necessary. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The LFV classified this service bulletin as mandatory and issued Swedish airworthiness directive 1-177, dated August 30, 2002, in order to assure the continued airworthiness of these airplanes in Sweden.

##### **FAA's Conclusions**

This airplane model is manufactured in Sweden and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LFV has kept the FAA informed of the situation described above. The FAA has examined the findings of the LFV, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

##### **Explanation of Requirements of Proposed Rule**

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

##### **Cost Impact**

The FAA estimates that 3 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per airplane to accomplish the proposed inspection, and that the average labor rate is \$65 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is

estimated to be \$780, or \$260 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

##### **Regulatory Impact**

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

##### **List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

##### **The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

##### **PART 39—AIRWORTHINESS DIRECTIVES**

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**SAAB Aircraft AB:** Docket 2002–NM–259–AD.

*Applicability:* Model SAAB 2000 series airplanes, serial numbers –004 through –063 inclusive; certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent the roll and pitch disconnect handles from being difficult to operate, which could result in an increase in pilot workload and subsequent reduced controllability of the airplane, accomplish the following:

**Inspection and Modification**

(a) Within 400 flight hours after the effective date of this AD, perform an inspection of the roll and pitch disconnect handles for difficult operation, in accordance with the Accomplishment Instructions of Saab Service Bulletin 2000–27–047, dated August 30, 2002. If the force required to move any disconnect handle is found to be outside the limits specified in the service bulletin, before further flight, adjust the spring force of the handle in accordance with the Accomplishment Instructions of the service bulletin.

**Parts Installation**

(b) As of the effective date of this AD, no person may install on any airplane a roll disconnect handle, part number 7339056–503, or pitch disconnect handle, part number 7339056–504, unless it has been inspected and the spring force has been adjusted as applicable, per paragraph (a) of this AD.

**Alternative Methods of Compliance**

(c) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, FAA, is authorized to approve alternative methods of compliance (AMOCs) for this AD.

**Note 1:** The subject of this AD is addressed in Swedish airworthiness directive 1–177, dated August 30, 2002.

Issued in Renton, Washington, on February 25, 2004.

**Kalene C. Yanamura,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 04–4925 Filed 3–4–04; 8:45 am]

**BILLING CODE 4910–13–P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 39**

[Docket No. 2003–NM–112–AD]

**RIN 2120–AA64**

**Airworthiness Directives; Dornier Model 328–100 and Model 328–300 Series Airplanes**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Dornier Model 328–100 and Model 328–300 series airplanes. This proposal would require repetitive detailed inspections of all attach caps of the passenger seats for cracks or defects; and replacement of the caps with new caps, if necessary. This action is necessary to prevent failure due to cracking of the seat frame attach caps on the passenger seat assemblies, which could result in separation of the passenger seat from the supporting structure during an emergency landing, hard landing, or turbulence, and consequent injury to the seat occupant. This action is intended to address the identified unsafe condition.

**DATES:** Comments must be received by April 5, 2004.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–112–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: [9-anm-nprmcomment@faa.gov](mailto:9-anm-nprmcomment@faa.gov). Comments sent via fax or the Internet must contain “Docket No. 2003–NM–112–AD” in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from AvCraft Aerospace GmbH, P.O. Box 1103, D–82230 Wessling, Germany. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Tom Groves, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1503; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:****Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such

written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: “Comments to Docket Number 2003–NM–112–AD.” The postcard will be date stamped and returned to the commenter.

**Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–112–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

**Discussion**

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, notified the FAA that an unsafe condition may exist on certain Dornier Model 328–100 and –300 series airplanes. The LBA advises that it has received reports of instances of failure of the seat frame attach caps on the passenger seat assemblies due to cracking. This condition, if not corrected, could result in separation of the passenger seat from the supporting structure during an emergency landing, hard landing, or turbulence, which

could result in injury to the seat occupant.

#### Explanation of Relevant Service Information

Dornier has issued Service Bulletin SB-328-25-412, dated November 21, 2002 (for Model 328-100 series airplanes); and Service Bulletin SB-328J-25-143, dated November 21, 2002 (for Model 328-300 series airplanes); as applicable. The service bulletins describe procedures for performing repetitive detailed inspections of all attach caps of the passenger seats for cracks or defects; for replacing the caps with new caps, if necessary; and for reporting inspection findings to the airplane and passenger seat manufacturers. Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition. The LBA classified these service bulletins as mandatory and issued German airworthiness directive 2003-063, dated March 6, 2003, and German airworthiness directive 2003-072, dated March 6, 2003, in order to assure the continued airworthiness of these airplanes in Germany.

#### Additional Sources of Service Information

The Dornier service bulletins refer to B/E Aerospace Service Bulletin 2524.519/520-2532, dated November 2, 2001, and B/E Aerospace Service Bulletin 2524.519/520-2530, Revision C, dated November 12, 2001, as additional sources of service information for accomplishment of the inspections and replacement of the passenger seat attach caps.

#### FAA's Conclusions

These airplane models are manufactured in Germany and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above. The FAA has examined the findings of the LBA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

#### Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same

type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously, except as discussed below.

#### Difference Between Proposed Rule and Referenced Service Bulletins

Operators should note that, although the referenced service bulletins describe procedures for reporting all inspection findings to the airplane and passenger seat manufacturers, this proposed AD would not require those actions. The FAA does not need this information from operators.

#### Clarification Between Proposed Rule and German Airworthiness Directives

Although the German airworthiness directives specify accomplishing the repetitive detailed inspections every 8,000 flight hours or every 2C-Check, we have determined that compliance times should not be based on indefinite intervals such as "every 2 C-Check." Since maintenance schedules vary from operator to operator, there can be no assurance that the action will be accomplished within the time frame for safe operation of the aircraft. Therefore we have added a specific calendar time limit of 48 months for the repetitive detailed inspections to align with the 2C-Check interval specified in the German airworthiness directives.

#### Cost Impact

The FAA estimates that 101 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours to accomplish the proposed inspection, and that the average labor rate is \$65 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be \$19,695, or \$195 per airplane, per inspection cycle. The cost impact figure discussed above is based on assumptions that no operator has accomplished any of the proposed requirements of this AD action, and that no operators would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

The cost impact figure discussed above is based on assumptions that no operator has accomplished any of the proposed requirements of this AD action, and that no operators would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

#### Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship

between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

#### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

#### PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

#### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Fairchild Dornier GmbH (Formerly Dornier Luftfahrt GmbH):** Docket 2003-NM-112-AD.

**Applicability:** Model 328-100 and -300 series airplanes, equipped with B/E Aerospace passenger seats, Model part number (P/N) 2524.519-() and Model P/N 2524.520-(); certificated in any category.

**Compliance:** Required as indicated, unless accomplished previously.

To prevent failure due to cracking of the seat frame attach caps on the passenger seat assemblies, which could result in separation of the passenger seat from the supporting structure during an emergency landing, hard landing, or turbulence, and consequent injury to the seat occupant, accomplish the following:

#### Service Bulletin References

(a) The term "service bulletin," as used in this proposed AD, means the

Accomplishment Instructions of Dornier Service Bulletin SB-328-25-412, dated November 21, 2002 (for Model 328-100 series airplanes); and Dornier Service Bulletin SB-328J-25-143, dated November 21, 2002 (for Model 328-300 series airplanes); as applicable.

**Note 1:** The Dornier service bulletins refer to B/E Aerospace Service Bulletin 2524.519/520-2532, dated November 2, 2001; and B/E Aerospace Service Bulletin 2524.519/520-2530, Revision C, dated November 12, 2001; as additional sources of service information for accomplishment of the inspections and replacement of the passenger seat attach caps.

#### Inspection

(b) Within 100 flight hours from the effective date of this AD, perform a detailed inspection of all attach caps of the passenger seats for cracks or defects, in accordance with the Accomplishment Instructions of the applicable service bulletin. Repeat the detailed inspection thereafter at intervals not to exceed 8,000 flight hours or 48 months, whichever comes first.

**Note 2:** For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

#### Replacement

(c) If any cracked or defective seat frame attach cap is found during any detailed inspection required by paragraph (b) of this AD, prior to further flight, replace the cap with a new cap in accordance with the applicable service bulletin.

#### Reporting Requirement

(d) Although the service bulletins referenced in this AD specify to submit certain information to the manufacturer, this AD does not include such a requirement.

#### Alternative Methods of Compliance

(e) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM-116, FAA, Transport Airplane Directorate, is authorized to approve alternative methods of compliance (AMOCs) for this AD.

**Note 3:** The subject of this AD is addressed in German airworthiness directive 2003-063, dated March 6, 2003, and German airworthiness directive 2003-072, dated March 6, 2003.

Issued in Renton, Washington, on February 24, 2004.

**Kalene C. Yanamura,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*  
[FR Doc. 04-4924 Filed 3-4-04; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 2003-NM-130-AD]

RIN 2120-AA64

#### Airworthiness Directives; Saab Model SAAB SF340A and SAAB 340B Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Saab Model SAAB SF340A and SAAB 340B series airplanes. This proposal would require relocating the most outboard latch in the right hand leading edge of the refueling panel, and sealing of the original latch-mounting cutout. This action is necessary to prevent wear of the signal conditioner wiring harness behind the refueling panel, which could result in a short circuit and consequent smoke or fire behind the refueling panel. This action is intended to address the identified unsafe condition.

**DATES:** Comments must be received by April 5, 2004.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2003-NM-130-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227-1232. Comments may also be sent via the Internet using the following address: [9-anm-nprmcomment@faa.gov](mailto:9-anm-nprmcomment@faa.gov). Comments sent via fax or the Internet must contain "Docket No. 2003-NM-130-AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S-581.88, Linköping, Sweden. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Rosanne Ryburn, Aerospace Engineer;

International Branch, ANM-116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2139; fax (425) 227-1149.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2003-NM-130-AD." The postcard will be date stamped and returned to the commenter.

##### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2003-NM-130-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

##### Discussion

The Luftfartsverket (LFV), which is the airworthiness authority for Sweden, notified the FAA that an unsafe condition may exist on Saab Model

SAAB SF340A and SAAB 340B series airplanes. The LfV advises that it has received reports of wear of signal conditioner wiring harnesses behind the refueling panel. This condition, if not corrected, could result in a short circuit and consequent smoke or fire behind the refueling panel.

#### Explanation of Relevant Service Information

Saab has issued Service Bulletin 340-57-042, dated May 7, 2003, which describes procedures for relocating the most outboard latch in the right hand leading edge of the refueling panel, and sealing the original latch-mounting cutout. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The LfV classified this service bulletin as mandatory and issued Swedish airworthiness directive 1-187, dated May 8, 2003, to ensure the continued airworthiness of these airplanes in Sweden.

#### FAA's Conclusions

These airplane models are manufactured in Sweden and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LfV has kept the FAA informed of the situation described above. The FAA has examined the findings of the LfV, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

#### Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

#### Cost Impact

The FAA estimates that 273 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed actions, and that the average labor rate is \$65 per work hour. Required parts would cost approximately \$310 per airplane. Based on these figures, the cost impact of the proposed AD on U.S.

operators is estimated to be \$120,120, or \$440 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

#### Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

#### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

#### PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

#### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**SAAB Aircraft AB:** Docket 2003-NM-130-AD.

*Applicability:* Model SAAB SF340A series airplanes, serial numbers (S/N) 004 through 159 inclusive; and Model SAAB 340B series airplanes, S/Ns 160 through 459 inclusive; certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent wear of the signal conditioner wiring harness behind the refueling panel, which could result in a short circuit and consequent smoke or fire behind the refueling panel, accomplish the following:

#### Corrective Action

(a) Within 24 months from the effective date of this AD, relocate the most outboard latch in the right hand leading edge of the refueling panel, and seal the original latch-mounting cutout in the refueling panel; in accordance with the Accomplishment Instructions of Saab Service Bulletin 340-57-042, dated May 7, 2003.

#### Alternative Methods of Compliance

(b) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM-116, FAA, is authorized to approve alternative methods of compliance for this AD.

**Note 1:** The subject of this AD is addressed in Swedish airworthiness directive 1-187, dated May 8, 2003.

Issued in Renton, Washington, on February 24, 2004.

**Kalene C. Yanamura,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*  
[FR Doc. 04-4920 Filed 3-4-04; 8:45 am]

BILLING CODE 4910-13-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 2002-NM-132-AD]

RIN 2120-AA64

#### Airworthiness Directives; Bombardier Model DHC-8-400, -401, and -402 Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Bombardier Model DHC-8-400, -401, and -402 airplanes. This proposal would require an inspection to determine the serial number of the

spoiler lift dump valves installed on the inboard and outboard spoilers, and replacement of certain spoiler lift dump valves. This proposal also would provide for revising the airplane flight manual to include performance penalties, which would allow the replacement of affected spoiler lift dump valves to be deferred. This action is necessary to prevent failure of the ground spoilers to deploy on the ground, which could result in overrunning the end of the runway in the event of a rejected takeoff. This action is intended to address the identified unsafe condition.

**DATES:** Comments must be received by April 5, 2004.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2002-NM-132-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227-1232. Comments may also be sent via the Internet using the following address: [9-anm-nprmcomment@faa.gov](mailto:9-anm-nprmcomment@faa.gov). Comments sent via fax or the Internet must contain "Docket No. 2002-NM-132-AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Westbury, New York.

**FOR FURTHER INFORMATION CONTACT:** Ezra Sasson, Aerospace Engineer, Systems and Flight Test Branch, ANE-172, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Westbury, New York 11590; telephone (516) 228-7320; fax (516) 794-5531.

#### **SUPPLEMENTARY INFORMATION:**

##### **Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and

be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002-NM-132-AD." The postcard will be date stamped and returned to the commenter.

##### **Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2002-NM-132-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

##### **Discussion**

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on certain Bombardier Model DHC-8-400, -401, and -402 airplanes. TCCA advises that, during manufacturing, a venting slot was omitted on one batch of the solenoid armatures that operate the spoiler lift dump valves. Absence of this venting slot could create a pressure differential that prevents the solenoid armature from shuttling and supplying hydraulic pressure to the actuator of the spoiler lift dump valves. This condition, if not corrected, could cause failure of the ground spoilers to deploy on the ground, which could result in

overrunning the end of the runway in the event of a rejected takeoff.

##### **Explanation of Relevant Service Information**

Bombardier has issued de Havilland Service Bulletin 84-27-12, Revision "A," dated December 12, 2001, which describes procedures for an inspection to determine the serial number of the spoiler lift dump valves installed on the inboard and outboard spoilers. For spoiler lift dump valves with serial numbers within a certain range, the service bulletin describes procedures for replacing the existing spoiler lift dump valve with one that it is outside the affected range of serial numbers or one that has been modified. Service Bulletin 84-27-12 refers to Parker Service Bulletin 395800-27-229, dated September 11, 2001, as an additional source of service information for replacing the spoiler dump valves. The Parker service bulletin is included within the de Havilland service bulletin.

Accomplishment of the actions specified in the de Havilland service bulletin is intended to adequately address the identified unsafe condition. TCCA classified the de Havilland service bulletin as mandatory and issued Canadian airworthiness directive CF-2001-44, dated December 3, 2001, to ensure the continued airworthiness of these airplanes in Canada.

##### **FAA's Conclusions**

These airplane models are manufactured in Canada and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCCA has kept us informed of the situation described above. We have examined the findings of TCCA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

##### **Explanation of Requirements of Proposed Rule**

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the de Havilland service bulletin described previously, except as discussed below. This proposed AD also provides for revising the airplane flight manual (AFM) to include performance penalties, which would allow the

replacement of affected spoiler lift dump valves to be deferred for a certain length of time. Once the spoiler lift dump valves have been replaced, these performance penalties may be removed from the AFM.

#### Difference Between Service Information and Proposed AD

Although the Parker service bulletin included within the de Havilland service bulletin specifies to return affected parts to the manufacturer, this proposed AD would not include such a requirement.

#### Cost Impact

We estimate that 10 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 1 work hour per airplane to accomplish the proposed inspection to determine the serial number of the spoiler lift dump valves, at an average labor rate of \$65 per work hour. Based on these figures, the cost impact of this proposed inspection on U.S. operators is estimated to be \$650, or \$65 per airplane.

For airplanes equipped with spoiler lift dump valves in the affected serial number range, it would take approximately 2 work hours per airplane to accomplish the proposed replacement, at an average labor rate of \$65 per work hour. Required parts would be provided by the parts manufacturer at no charge. Based on these figures, the cost impact of this proposed replacement is estimated to be \$130 per airplane.

Should an operator elect to accomplish the AFM revision that allows deferral of the replacement, it would take approximately 1 work hour per airplane to accomplish, at an average labor rate of \$65 per work hour. Based on these figures, the cost impact of this AFM revision, if accomplished, would be \$65 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

#### Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

#### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

#### PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

##### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Bombardier, Inc. (Formerly de Havilland, Inc.):** Docket 2002-NM-132-AD.

**Applicability:** Model DHC-8-400, -401, and -402 airplanes; serial numbers 4005, 4006, 4008 through 4015 inclusive, and 4018 through 4052 inclusive; certificated in any category.

**Compliance:** Required as indicated, unless accomplished previously.

To prevent failure of the ground spoilers to deploy on the ground, which could result in overrunning the end of the runway in the event of a rejected takeoff, accomplish the following:

#### Inspection to Determine Serial Number

(a) Within 45 days after the effective date of this AD, perform a one-time inspection of

the spoiler lift dump valves on the inboard and outboard spoilers to determine the serial number, per Bombardier Service Bulletin 84-27-12, Revision "A," dated December 12, 2001.

(1) For any spoiler lift dump valve with a serial number from 5164 through 5264 inclusive or 5267 through 5279 inclusive, accomplish paragraph (b) of this AD.

(2) For any spoiler lift dump valve with a serial number outside the ranges specified in paragraph (a)(1) of this AD, no further action is required by this paragraph.

#### Replacement of Spoiler Lift Dump Valves

(b) For any spoiler lift dump valve with a serial number from 5164 through 5264 inclusive or 5267 through 5279 inclusive: Accomplish paragraph (b)(1) or (b)(2) of this AD.

(1) Except as provided by paragraph (b)(2) of this AD: Before further flight after the inspection required by paragraph (a) of this AD, replace the affected spoiler lift dump valve with a new or serviceable valve that has a serial number outside the range specified in paragraph (a)(1) of this AD, or with a valve having a serial number with the suffix "A," which indicates that the valve has been modified to correct the defect. Do this replacement per Bombardier Service Bulletin 84-27-12, Revision "A," dated December 12, 2001.

**Note 1:** Bombardier Service Bulletin 84-27-12, Revision "A," dated December 12, 2001, refers to Parker Service Bulletin 395800-27-229, dated September 11, 2001, as an additional source of service information for accomplishing the replacement of the spoiler lift dump valves. The Parker service bulletin is included within the Bombardier service bulletin.

(2) Do paragraphs (b)(2)(i) and (b)(2)(ii) of this AD.

(i) Before further flight after the inspection required by paragraph (a) of this AD, revise the Limitations section of the de Havilland DHC-8-400 airplane flight manual (AFM) to include the information on performance penalties included in Table 1 of this AD. This may be accomplished by inserting a copy of this AD into the AFM.

TABLE 1.—PERFORMANCE PENALTY FOR SUSPECT LIFT DUMP VALVES

Accelerate—Stop Distance		
Flap 5° ....	Increase 2%.	(Figures 5-5-4 and 5-5-5)
Flap 10° ..	Increase 2%.	(Figures 5-5-9 and 5-5-10)
Flap 15° ..	Increase 3%.	(Figures 5-5-14 and 5-5-15)
Landing Distance		
Flap 10° ..	Increase 3%.	(Figures 5-11-1 and 5-11-4)
Flap 15° ..	Increase 5%.	(Figures 5-11-2 and 5-11-4)
Flap 35° ..	Increase 11%.	(Figures 5-11-3 and 5-11-4)

(ii) Within 6 months after the effective date of this AD, do paragraph (b)(1) of this AD.



Once the requirements of paragraph (b)(1) of this AD have been accomplished, the AFM revision required by paragraph (b)(2)(i) of this AD may be removed from the AFM.

#### Parts Installation

(c) As of the effective date of this AD, no person may install a spoiler lift dump valve having a serial number listed in paragraph (a)(1) of this AD, unless the valve's serial number includes a suffix of "A" to indicate that it has been modified to remove the defect that is the subject of this AD.

#### Alternative Methods of Compliance

(d) In accordance with 14 CFR 39.19, the Manager, New York Aircraft Certification Office, FAA, is authorized to approve alternative methods of compliance for this AD.

**Note 2:** The subject of this AD is addressed in Canadian airworthiness directive CF-2001-44, dated December 3, 2001.

Issued in Renton, Washington, on February 20, 2004.

**Kalene C. Yanamura,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 04-4932 Filed 3-4-04; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 2003-NM-138-AD]

RIN 2120-AA64

#### Airworthiness Directives; Dornier Model 328-300 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Dornier Model 328-300 series airplanes. This proposal would require modification of a certain ground cooling fan. This action is necessary to prevent overheating of the connecting terminals of the ground cooling fan, which could result in smoke or fire in the flight compartment and main cabin. This action is intended to address the identified unsafe condition.

**DATES:** Comments must be received by April 5, 2004.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2003-NM-138-AD, 1601 Lind Avenue, SW.,

Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227-1232. Comments may also be sent via the Internet using the following address: [9-anm-nprmcomment@faa.gov](mailto:9-anm-nprmcomment@faa.gov). Comments sent via fax or the Internet must contain "Docket No. 2003-NM-138-AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from AvCraft Aerospace GmbH, P.O. Box 1103, D-82230 Wessling, Germany. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Dan Rodina, Aerospace Engineer, International Branch, ANM-116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2125; fax (425) 227-1149.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report

summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2003-NM-138-AD." The postcard will be date stamped and returned to the commenter.

#### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2003-NM-138-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

#### Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, notified the FAA that an unsafe condition may exist on certain Dornier Model 328-300 series airplanes. The LBA advises that certain data indicate that the high transition resistance of the connecting terminals in a certain ground cooling fan may cause the terminals to overheat. Such high transition resistance is due to a loose stud connection. Overheating of the connecting terminals could result in smoke or fire in the flight compartment and main cabin.

#### Explanation of Relevant Service Information

Dornier has issued Service Bulletin SB-328J-21-045, Revision 1, dated February 26, 2003, which describes procedures for modification of any ground cooling fan having part number AE1716D00. The modification involves replacement of the wire subassemblies (positive and negative) with new wire subassemblies, installation of a hexagon nut on the positive terminal to improve the terminal lug installation, and replacement of the basic flat washer with a spring washer. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The LBA classified this service bulletin as mandatory and issued German airworthiness directive 2003-144, dated May 15, 2003, to ensure the continued airworthiness of these airplanes in Germany.

#### FAA's Conclusions

This airplane model is manufactured in Germany and is type certificated for operation in the United States under the provisions of section 21.29 of the



Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept us informed of the situation described above. We have examined the findings of the LBA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

#### Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

#### Cost Impact

We estimate that 52 airplanes of U.S. registry would be affected by this proposed AD, that it would take about 2 work hours per airplane to accomplish the proposed modification, and that the average labor rate is \$65 per work hour. Required parts would cost about \$14,000 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be \$734,760, or \$14,130 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

#### Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT

Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

#### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

#### PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

##### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Fairchild Dornier GmbH (Formerly Dornier Luftfahrt GmbH):** Docket 2003–NM–138–AD.

**Applicability:** Model 328–300 series airplanes equipped with a ground cooling fan, part number AE1716D00, certificated in any category.

**Compliance:** Required as indicated, unless accomplished previously.

To prevent overheating of the connecting terminals of the ground cooling fan, which could result in smoke or fire in the flight compartment and main cabin, accomplish the following:

#### Modification

(a) Within 60 days after the effective date of this AD: Modify the ground cooling fan by doing all the actions per the Accomplishment Instructions of Dornier Service Bulletin SB–328J–21–045, Revision 1, dated February 26, 2003.

#### Alternative Methods of Compliance

(b) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, is authorized to approve alternative methods of compliance for this AD.

**Note 1:** The subject of this AD is addressed in German airworthiness directive 2003–144, dated May 15, 2003.

Issued in Renton, Washington, on February 24, 2004.

**Kalene C. Yanamura,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 04–4933 Filed 3–4–04; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 2003–NM–120–AD]

RIN 2120–AA64

#### Airworthiness Directives; Dornier Model 328–100 and –300 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Dornier Model 328–100 and –300 series airplanes. This proposal would require a one-time inspection for fracture and/or breakage of the hinge bolt of the output rod of the rudder spring tab lever assembly, and corrective action if necessary. This proposal also would require modification of the hinge bolt. This action is necessary to prevent fracture and/or breakage of the hinge bolt, which could result in migration of the bolt tail, a loose spring tab, and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

**DATES:** Comments must be received by April 5, 2004.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–120–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: [9-anm-nprmcomment@faa.gov](mailto:9-anm-nprmcomment@faa.gov). Comments sent via fax or the Internet must contain "Docket No. 2003–NM–120–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from AvCraft Aerospace GmbH, P.O. Box 1103, D-82230 Wessling, Germany. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Dan Rodina, Aerospace Engineer, International Branch, ANM-116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2125; fax (425) 227-1149.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2003-NM-120-AD." The postcard will be date stamped and returned to the commenter.

**Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the

FAA, Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2003-NM-120-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

**Discussion**

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, notified the FAA that an unsafe condition may exist on all Dornier Model 328-100 and -300 series airplanes. The LBA advises that certain data indicate the possibility of fracture and/or breakage of the hinge bolt tail of the output rod of the rudder spring tab lever assembly, which could result in migration of the bolt tail. This condition, if not corrected, could result in a loose spring tab and consequent reduced controllability of the airplane.

**Explanation of Relevant Service Information**

Dornier has issued Service Bulletins SB-328-27-423 (for Model 328-100 series airplanes), and SB-328J-27-159 (for Model 328-300 series airplanes), both dated February 4, 2002. The service bulletins describe procedures for a one-time inspection for fracture and/or breakage of the hinge bolt of the output rod of the rudder spring tab lever assembly. The service bulletins also describe procedures for modification of the hinge bolt. The modification includes installing a new locking washer, plain washer, and castellated nut, application of corrosion preventative treatment to the contact surfaces of the locking washer, and torquing the castellated nut. Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition. The LBA classified these service bulletins as mandatory and issued German airworthiness directives 2003-137 and 2003-143, both dated May 15, 2003, to ensure the continued airworthiness of these airplanes in Germany.

**FAA's Conclusions**

These airplane models are manufactured in Germany and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept us informed of the situation described above. We have examined the findings of the LBA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

**Explanation of Requirements of Proposed Rule**

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

**Differences Among Alert Service Bulletins, German Airworthiness Directives, and Proposed AD**

Whereas the service bulletins and German airworthiness directives do not specify the type of inspection of the hinge bolt of the output rod of the rudder spring tab lever assembly, this proposed AD would require a detailed inspection. A note has been added to define the inspection.

The service bulletins do not describe procedures for corrective action if any broken bolt is found during the inspection, but this proposed AD would require replacement of the bolt per a method approved by either the FAA or the LBA for compliance with this proposed AD.

**Cost Impact**

We estimate that 112 airplanes of U.S. registry would be affected by this proposed AD, that it would take about 1 work hour per airplane to accomplish the proposed inspection and modification, and that the average labor rate is \$65 per work hour. Required parts would cost about \$205 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be \$30,240, or \$270 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

**Regulatory Impact**

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore,

it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

#### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

#### PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

##### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Fairchild Dornier GmbH (Formerly Dornier Luftfahrt GmbH):** Docket 2003–NM–120–AD.

**Applicability:** All Model 328–100 and 328–300 series airplanes, certificated in any category.

**Compliance:** Required as indicated, unless accomplished previously.

To prevent fracture and/or breakage of the hinge bolt of the output rod of the rudder spring tab lever assembly, which could result in migration of the bolt tail, a loose spring tab, and consequent reduced controllability of the airplane, accomplish the following:

#### One-Time Inspection/Corrective Action/Modification

(a) Within 4 months after the effective date of this AD: Do a one-time detailed inspection of the hinge bolt of the output rod of the rudder spring tab lever assembly for fracture and/or breakage of the hinge bolt by doing all the applicable actions per the Accomplishment Instructions of Dornier Service Bulletin SB–328–27–423 (for Model 328–100 series airplanes) or SB–328J–27–159

(for Model 328–300 series airplanes), both dated February 4, 2002, as applicable.

**Note 1:** For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(1) If no fracture or breakage is found: Before further flight, modify the hinge bolt by doing all the applicable actions per the Accomplishment Instructions of the applicable service bulletin.

(2) If any fracture or breakage is found: Before further flight, replace the bolt per a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Luftfahrt-Bundesamt (or its delegated agent); then modify the hinge bolt as required by paragraph (a)(1) of this AD.

#### Alternative Methods of Compliance

(b) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, is authorized to approve alternative methods of compliance for this AD.

**Note 2:** The subject of this AD is addressed in German airworthiness directives 2003–137 and 2003–143, both dated May 15, 2003.

Issued in Renton, Washington, on February 26, 2004.

**Kalene C. Yanamura,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*  
[FR Doc. 04–4934 Filed 3–4–04; 8:45 am]

**BILLING CODE 4910–13–P**

#### DEPARTMENT OF TRANSPORTATION

#### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 2003–NM–263–AD]

**RIN 2120–AA64**

#### Airworthiness Directives; Dornier Model 328–100 and –300 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Dornier Model 328–100 and –300 series airplanes. This proposal would require repetitive inspections of the bearing lugs of the rudder spring tab lever assembly for cracking, and corrective action if

necessary. This action is necessary to prevent failure of the rudder flight control system due to such cracking, which could result in loss of rudder control and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

**DATES:** Comments must be received by April 5, 2004.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–263–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2003–NM–263–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from AvCraft Aerospace GmbH, P.O. Box 1103, D–82230 Wessling, Germany. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to

change the compliance time and a request to change the service bulletin reference as two separate issues.

- For each issue, state what specific change to the proposed AD is being requested.

- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2003-NM-263-AD." The postcard will be date stamped and returned to the commenter.

#### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2003-NM-263-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

#### Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, notified the FAA that an unsafe condition may exist on all Dornier Model 328-100 and -300 series airplanes. The LBA advises that certain data indicate the possibility of a failure of the rudder flight control system due to cracking in the bearing lugs of the rudder spring tab lever assembly. This condition, if not corrected, could result in loss of rudder control and consequent reduced controllability of the airplane.

#### Explanation of Relevant Service Information

Dornier has issued Alert Service Bulletin ASB-328-27-036 (for Model 328-100 series airplanes); and Alert Service Bulletin ASB-328J-27-013 (for Model 328-300 series airplanes); both dated February 12, 2003. The service bulletins describe procedures for repetitive inspections which include detailed visual inspections of the edges of the bearing lugs of the rudder spring tab lever assembly for cracking, and eddy current inspections on both bearing lug peripherals for cracking. The service bulletins also describe

procedures for corrective action for cracking. The corrective action involves replacement of the rudder spring tab lever assembly with a new assembly if any cracking of the bearing lugs is found, and a functional test of the rudder control system after replacement. Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition. The LBA classified these service bulletins as mandatory and issued German airworthiness directives 2003-383 and 2003-384, both dated November 13, 2003, to ensure the continued airworthiness of these airplanes in Germany.

#### FAA's Conclusions

These airplane models are manufactured in Germany and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept us informed of the situation described above. We have examined the findings of the LBA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

#### Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

#### Differences Among Alert Service Bulletins, German Airworthiness Directives, and Proposed AD

The German airworthiness directives and service bulletins recommend that the inspections of the edges of the bearing lugs of the rudder spring tab lever assembly be repeated at every C-check; however, the repetitive intervals required by this proposed AD are specified as every 24 months, which generally corresponds to an operator's C-check schedule. We have determined that these repetitive intervals represent the maximum interval of time allowable for affected airplanes to continue to operate, prior to accomplishing the required inspections, without compromising safety. Because maintenance schedules may vary from operator to operator, there would be no

assurance that inspections accomplished according to a particular operator's C-check schedule would be accomplished during the maximum allowable intervals.

The service bulletins recommend reporting crack findings to the manufacturer, but this proposed AD does not contain such a requirement. In addition, the service bulletins recommend returning damaged lever assemblies to the manufacturer, but this proposed AD does not contain such a requirement.

Whereas the service bulletins specify a detailed visual inspection of the rudder spring tab lever assembly, this proposed AD would require a detailed inspection. A note has been added to define that inspection.

#### Cost Impact

We estimate that 112 airplanes of U.S. registry would be affected by this proposed AD, that it would take about 1 work hour per airplane to do the proposed inspections, and that the average labor rate is \$65 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be \$7,280, or \$65 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

#### Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative,

on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

#### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

#### PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

##### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Fairchild Dornier GmbH (Formerly Dornier Luftfahrt GmbH):** Docket 2003–NM–263–AD.

**Applicability:** All Model 328–100 and –300 series airplanes, certificated in any category.

**Compliance:** Required as indicated, unless accomplished previously.

To prevent failure of the rudder flight control system due to cracking of the bearing lugs of the rudder spring tab lever assembly, which could result in loss of rudder control and consequent reduced controllability of the airplane, accomplish the following:

##### Repetitive Inspections

(a) Within 400 flight hours or 2 months after the effective date of this AD, whichever is first: Do detailed and eddy current inspections for cracking of the bearing lugs of the rudder spring tab lever assembly by doing all the actions per Paragraphs 2.A., 2.B., and 2.D. of the Accomplishment Instructions of Dornier Alert Service Bulletin ASB–328–27–036 (for Model 328–100 series airplanes); or ASB–328J–27–013 (for Model 328–300 series airplanes); both dated February 12, 2003, as applicable. If no cracking is found, repeat the inspections thereafter at intervals not to exceed 24 months.

**Note 1:** For the purposes of this AD, a detailed inspection is defined as: “An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror,

magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.”

##### Corrective Action/Repetitive Inspections

(b) If any cracking is found during any inspection required by paragraph (a) of this AD: Before further flight, replace the spring tab lever assembly with a new assembly by doing all the actions per Paragraph 2.C. of the Accomplishment Instructions of Dornier Alert Service Bulletin ASB–328–27–036; or ASB–328J–27–013, both dated February 12, 2003, as applicable. Repeat the inspections required by paragraph (a) of this AD thereafter at intervals not to exceed 24 months.

(c) Dornier Alert Service Bulletins ASB–328–27–036 and ASB–328J–27–013, both dated February 12, 2003, recommend reporting crack findings and returning damaged lever assemblies to the manufacturer, but this AD does not contain such requirements.

**Note 2:** There is no terminating action available at this time for the repetitive inspections required by this AD.

##### Alternative Methods of Compliance

(d) In accordance with 14 CFR 39.19, the Manager, International Branch, FAA, ANM–116, Transport Airplane Directorate, is authorized to approve alternative methods of compliance for this AD.

**Note 3:** The subject of this AD is addressed in German airworthiness directives 2003–383 and 2003–384, both dated November 13, 2003.

Issued in Renton, Washington, on February 25, 2004.

**Kalene C. Yanamura,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 04–4935 Filed 3–4–04; 8:45 am]

**BILLING CODE 4910–13–P**

#### DEPARTMENT OF TRANSPORTATION

#### Federal Aviation Administration

##### 14 CFR Part 39

[Docket No. 2002–NM–337–AD]

RIN 2120–AA64

##### Airworthiness Directives; Airbus Model A300 B2 and A300 B4 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A300 B2 and A300 B4 series airplanes. This proposal would require modification of the 107VU electronics rack in the avionics

compartment to ensure that fluid does not enter the rack. This action is necessary to prevent the loss of electrical power during flight, which could result in reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

**DATES:** Comments must be received by April 19, 2004.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–337–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: [9-anm-nprmcomment@faa.gov](mailto:9-anm-nprmcomment@faa.gov). Comments sent via fax or the Internet must contain “Docket No. 2002–NM–337–AD” in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Tim Backman, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2797; fax (425) 227–1149.

##### SUPPLEMENTARY INFORMATION:

##### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to

change the compliance time and a request to change the service bulletin reference as two separate issues.

- For each issue, state what specific change to the proposed AD is being requested.

- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–337–AD." The postcard will be date stamped and returned to the commenter.

#### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–337–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

#### Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A300 B2 and A300 B4 series airplanes. The DGAC advises that, during final approach of an in-service airplane, the electrical power on a number of circuits was lost. An internal short circuit on contact 12HR, located on the backplate of the 107VU electronics rack, caused the internal parts of the contact to melt down, and damaged the wire harness that supplies power to the number 3 pitot probe heating system. This incident was caused by fluid dripping into the 107VU electronics rack, located below galley G3, due to a degraded cabin floor seal or a blocked drainpipe. This condition, if not corrected, could result in the loss of electrical power during flight, and reduced controllability of the airplane.

#### Explanation of Relevant Service Information

The FAA has reviewed and approved Airbus Service Bulletin A300–24–0098, dated June 13, 2002, which describes

procedures for modifying the 107VU electronics rack. The modification includes adding deflectors above the cover and ventilation grids on the electronics rack; making a drip loop with the power supply bundles at the input of the rack; adding sealant in the cable thru-fittings; and adding protection on the pitot heating system wiring. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

The DGAC classified this service bulletin as mandatory and issued French airworthiness directive 2002–579(B) R1, dated February 19, 2003, to ensure the continued airworthiness of these airplanes in France.

#### Explanation of Requirements of Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

#### Cost Impact

The FAA estimates that 120 airplanes of U.S. registry would be affected by this proposed AD. It would take approximately 4 work hours per airplane to accomplish the proposed actions, at an average labor rate of \$65 per work hour. Required parts would cost approximately \$390. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be \$78,000, or \$650 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

#### Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal

would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

#### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

#### PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

##### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Airbus:** Docket 2002–NM–337–AD.

*Applicability:* Model A300 B2 and A300 B4 series airplanes, except those on which Airbus Modification 12447 has been accomplished; certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent fluid from entering the 107VU electronics rack, which could result in the loss of electrical power during flight, and consequent reduced controllability of the airplane, accomplish the following:

#### Modification

(a) Within 12 months after the effective date of this AD, modify the 107VU electronics rack in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–24–0098, dated June 13, 2002.

#### Alternative Methods of Compliance

(b) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, is authorized to approve alternative methods of compliance for this AD.

**Note 1:** The subject of this AD is addressed in French airworthiness directive 2002–579(B) R1, dated February 19, 2003.

Issued in Renton, Washington, on February 24, 2004.

**Kalene C. Yanamura,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 04–4936 Filed 3–4–04; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 2002–NM–208–AD]

RIN 2120–AA64

#### **Airworthiness Directives; BAE Systems (Operations) Limited (Jetstream) Model 4101 Airplanes**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all BAE Systems (Operations) Limited (Jetstream) Model 4101 airplanes. This proposal would require operators to determine the flight cycles accumulated on each component of the main landing gear (MLG) and the nose landing gear (NLG), and to replace each component that reaches its life limit with a serviceable component. This proposal would also require operators to revise the Airworthiness Limitations section of the Instructions for Continued Airworthiness in the aircraft maintenance manual to reflect the new life limits. This action is necessary to prevent failure of certain components of the MLG and the NLG, which could result in failure of either or both landing gears, and consequent damage to the airplane and injury to passengers or crewmembers. This action is intended to address the identified unsafe condition.

**DATES:** Comments must be received by April 5, 2004.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–208–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal

holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain “Docket No. 2002–NM–208–AD” in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearn Road, Herndon, Virginia 20171. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

#### **FOR FURTHER INFORMATION CONTACT:**

Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

#### **SUPPLEMENTARY INFORMATION:**

##### **Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments, as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: “Comments to Docket Number 2002–NM–208–AD.” The postcard will be date stamped and returned to the commenter.

#### **Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–208–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

#### **Discussion**

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified the FAA that an unsafe condition may exist on all BAE Systems (Operations) Limited (Jetstream) Model 4101 airplanes. The CAA advises that the Airworthiness Limitations section of the Instructions for Continued Airworthiness was previously published to cover the life limits of whole landing gear units for both the main landing gear (MLG) and the nose landing gear (NLG). In quoting the life limits in this manner, it was assumed that all components of a landing gear unit would remain with that unit for the duration of its life. However, components of both the MLG and the NLG units on the affected airplanes have been transferred between different landing gear units during overhaul and repair. Therefore, the CAA advises that the flight cycles for each component of the MLG and NLG units must be established, and that each component must be replaced with a serviceable component when it reaches its life limit. Future revisions of the aircraft maintenance manual (AMM) will reflect the life limits for each component. Establishment of the life limit for each component of the landing gear units, and replacement when the component reaches its life limit, is intended to prevent failure of certain components of the MLG and the NLG. Failure of components of the MLG or NLG could result in failure of either or both landing gears, and consequent damage to the airplane and injury to passengers or crewmembers.

#### **Explanation of Relevant Service Information**

BAE Systems (Operations) Limited has issued Service Bulletin J41–32–078, dated April 12, 2002, which provides procedures for establishing the flight cycles accumulated by components of the MLG and NLG for which complete



records exist. This service bulletin also provides information about the life limits for all components of the MLG and NLG.

BAE Systems (Operations) Limited has also issued Service Bulletin J41-05-001, Revision 2, dated March 15, 2002, which provides procedures for establishing the life limits of NLG and MLG components for which complete records do not exist.

The CAA classified Service Bulletin J41-32-078 as mandatory and issued British airworthiness directive 007-04-2002 to ensure the continued airworthiness of these airplanes in the United Kingdom.

BAE Systems (Operations) Limited Service Bulletin J41-05-001 refers to J41 Service Information Leaflet 32-15, Issue 1, dated February 15, 2002, as an additional source of service information for establishing the life limits of landing gear components and for tracking the accumulated lives of each component.

#### FAA's Conclusions

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

#### Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously, except as discussed below. The proposed AD would also require operators to revise the Airworthiness Limitations section of the Instructions for Continued Airworthiness of the AMM to reflect the new life limits.

#### Clarification of Compliance Times Between the Proposed, and the British Airworthiness Directive, and Service Bulletin J41-32-078

British airworthiness directive 007-04-2002 does not give a compliance time for replacing components of the landing gear units. Service Bulletin J41-

32-078 requires replacement, prior to further flight, of components that are found to have reached life limits when flight cycles are first established. We have determined that the following compliance times ensure an adequate level of safety for the affected fleet: For any landing gear component that has reached its life limit as of the effective date of this proposed AD, replace the component within 60 days after establishing the accumulated flight cycles for that component; thereafter, replace any component before it reaches the applicable number of flight cycles for its life limit. In developing appropriate compliance times for this AD, we considered further recommendations from the manufacturer, the degree of urgency associated with the subject unsafe condition, and the time necessary to perform the replacement(s). In light of all of these factors, we find that the above compliance times represent an appropriate interval of time for affected airplanes to continue to operate without compromising safety.

#### Interim Action

We consider this proposed AD interim action. The manufacturer is currently completing a fatigue-testing program for the MLG and NLG that will address the unsafe condition identified in this AD. Once this testing is completed, and final life limits are established, we may consider additional rulemaking.

#### Cost Impact

The FAA estimates that 57 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed determination of the number of flight cycles, and 1 work hour per airplane to accomplish the proposed revision of the AMM. The average labor rate is \$65 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be \$7,410, or \$130 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up,

planning time, or time necessitated by other administrative actions.

#### Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

#### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

#### PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

#### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Bae Systems (Operations) Limited (formerly British Aerospace Regional Aircraft):**  
Docket 2002-NM-208-AD.

*Applicability:* All Model Jetstream 4101 airplanes, certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent failure of certain components of the main landing gear and the nose landing gear, which could result in failure of either or both landing gears, and consequent damage to the airplane and injury to passengers or crewmembers, accomplish the following:



**Determine Flight Cycles for Components**

(a) Within 90 days after the effective date of this AD: Determine the number of flight cycles accumulated on each landing gear component listed in Table 1 and Table 2 of the Accomplishment Instructions of BAE Systems (Operations) Limited Service Bulletin J41-32-078, dated April 12, 2002. If there are no records or incomplete records for any component, establish the number of flight cycles in accordance with the Accomplishment Instructions of BAE Systems (Operations) Limited Service Bulletin J41-05-001, Revision 2, dated March 15, 2002.

**Note 1:** BAE Systems (Operations) Limited Service Bulletin, J41-05-001 refers to J41 Service Information Leaflet 32-15, Issue 1, dated February 15, 2002, as an additional source of service information for establishing the life limits of landing gear components and for tracking the accumulated lives of each component.

**Replace Components**

(b) Except as provided by paragraph (c) of this AD, within 60 days after establishing the flight cycles per paragraph (a) of this AD: Replace any landing gear component that has reached the life limit determined by paragraph (a) of this AD, with a serviceable component in accordance with the applicable airplane maintenance manual (AMM). Thereafter, replace any component that reaches its life limit prior to the accumulation of the applicable number of flight cycles shown in Table 1 and Table 2 of the Accomplishment Instructions of BAE Systems (Operations) Limited Service Bulletin J41-32-078, dated April 12, 2002.

(c) Any component whose total accumulated life cycles has not been established, or that has exceeded its life limit, but has not yet been replaced per paragraph (b) of this AD, must be replaced within 72 months after the effective date of this AD, in accordance with BAE Systems (Operations) Limited Service Bulletin J41-32-078, dated April 12, 2002.

**Revise Aircraft Maintenance Manual**

(d) Within 30 days after the effective date of this AD: Revise the Airworthiness Limitations section of the Instructions for Continued Airworthiness of the AMM to include the life limits of the components listed in Table 1 and Table 2 of the Accomplishment Instructions of BAE Systems (Operations) Limited Service Bulletin J41-32-078, dated April 12, 2002. This may be accomplished by inserting a copy of the service bulletin in the Airworthiness Limitations section of the Instructions for Continued Airworthiness until such time as a revision is issued. Thereafter, except as provided in paragraph (g) of this AD, no alternative replacement times may be approved for any affected component.

**Parts Installation**

(e) As of the effective date of this AD, no landing gear unit, may be installed on any airplane unless the accumulated flight cycles of all components of that landing gear have been established per paragraph (a) of this AD,

and any component that has exceeded its life limit has been replaced per paragraph (b) of this AD.

**Actions Accomplished Per Previous Issue of Service Bulletin**

(f) Calculations of total accumulated flight cycles accomplished per BAE Systems (Operations) Limited Service Bulletin J41-05-001, Revision 1, dated April 10, 2001, are considered acceptable for compliance with the corresponding action specified in this AD.

**Alternative Methods of Compliance**

(g) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM-116, FAA, Transport Airplane Directorate, is authorized to approve alternative methods of compliance for this AD.

**Note 2:** The subject of this AD is addressed in British airworthiness directive 007-04-2002.

Issued in Renton, Washington, on February 24, 2004.

**Kalene C. Yanamura,**

*Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 04-4939 Filed 3-4-04; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 39**

**[Docket No. 2003-NM-278-AD]**

**RIN 2120-AA64**

**Airworthiness Directives; Saab Model SAAB SF340A and SAAB 340B Series Airplanes**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Saab Model SAAB SF340A and SAAB 340B series airplanes. This proposal would require replacement of certain hydraulic hoses with new hydraulic hoses. This action is necessary to prevent cracking and/or rupture and subsequent failure of hydraulic hoses. Such failure could result in loss of hydraulic pressure and fluid quantity, and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

**DATES:** Comments must be received by April 5, 2004.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport

Airplane Directorate, ANM-114, Attention: Rules Docket No. 2003-NM-278-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227-1232. Comments may also be sent via the Internet using the following address: [9-anm-nprmcomment@faa.gov](mailto:9-anm-nprmcomment@faa.gov). Comments sent via fax or the Internet must contain "Docket No. 2003-NM-278-AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S-581.88, Linköping, Sweden. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:**

Rosanne Ryburn, Aerospace Engineer, International Branch, ANM-116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2139; fax (425) 227-1149.

**SUPPLEMENTARY INFORMATION:****Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before

and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2003–NM–278–AD." The postcard will be date stamped and returned to the commenter.

#### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–278–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

#### Discussion

The Luftfartsverket (LFV), which is the airworthiness authority for Sweden, notified the FAA that an unsafe condition may exist on certain Saab Model SAAB SF340A and SAAB 340B series airplanes. The LFV advises that a large number of hydraulic hoses have failed due to fatigue caused by exposure of the hoses to both high pressure and bending cycles. Such failure could result in loss of hydraulic pressure and fluid quantity, and consequent reduced controllability of the airplane.

#### Explanation of Relevant Service Information

Saab has issued Service Bulletin 340–29–022, Revision 01, dated February 20, 2003, which describes procedures for removal of the existing hydraulic hoses leading to the actuators for the flaps, main landing gear (MLG), nose landing gear (NLG), NLG wheel well, and NLG downlock; identification of the new hydraulic hoses, and subsequent installation (including torquing the coupling nuts). Identification of new hydraulic hoses includes using a Vibro-pen to engrave the year, month, and date of the hose installation, and the serial number of the airplane on which the hose was installed. New hydraulic hoses installed in the flap actuators and MLG actuators must also be identified with the letters RF for the right-side flap actuator, LF for the left-side actuator, RG for the right-side MLG actuator, and LG for the left-side MLG actuator. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The LFV classified this service bulletin as

mandatory and issued Swedish airworthiness directive 1–170, dated December 17, 2001, to ensure the continued airworthiness of these airplanes in Sweden.

#### FAA's Conclusions

These airplane models are manufactured in Sweden and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LFV has kept the FAA informed of the situation described above. The FAA has examined the findings of the LFV, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

#### Explanation of Requirements of Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

#### Cost Impact

We estimate that 308 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 5 work hours per airplane to accomplish the proposed replacement of the hydraulic hoses, and that the average labor rate is \$65 per work hour. Required parts would cost approximately \$1,600 per airplane. Based on these figures, the cost impact of the proposed replacement of the hydraulic hoses on U.S. operators is estimated to be \$592,900, or \$1,925 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

#### Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

#### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

#### PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

#### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Saab Aircraft AB:** Docket 2003–NM–278–AD.

**Applicability:** Model SAAB SF340A series airplanes having serial numbers 004 through 159 inclusive, and SAAB 340B series airplanes having serial numbers 160 through 459 inclusive; certificated in any category.

**Compliance:** Required as indicated, unless accomplished previously.

To prevent cracking and/or rupture and subsequent failure of hydraulic hoses, which could result in loss of hydraulic pressure and fluid quantity, and consequent reduced controllability of the airplane, accomplish the following:

**Replacement of Hydraulic Hoses**

(a) Replace the hydraulic hoses leading to the actuators of the flaps, main landing gear (MLG), nose landing gear (NLG), NLG downlock, and NLG wheel well, with new hydraulic hoses by doing all of the actions per the Accomplishment Instructions of Saab Service Bulletin 340-29-022, Revision 01, dated February 20, 2003. Do the replacement at the times specified in paragraphs (a)(1) and (a)(2) of this AD, as applicable.

(1) For airplanes on which affected hydraulic hoses have accumulated 12,000 or more total flight cycles since new: Within the next 5,000 flight cycles or 24 months after the effective date of this AD, whichever is first.

(2) For airplanes on which affected hydraulic hoses have accumulated less than 12,000 total flight cycles since new: Before the accumulation of 12,000 total flight cycles or within 24 months after the effective date of this AD, whichever is later.

**Alternative Methods of Compliance**

(b) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM-116, FAA, Transport Airplane Directorate, is authorized to approve alternative methods of compliance for this AD.

**Note 1:** The subject of this AD is addressed in Swedish airworthiness directive 1-170, dated December 17, 2001.

Issued in Renton, Washington, on February 24, 2004.

**Kalene C. Yanamura,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 04-4940 Filed 3-4-04; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 71**

[Docket FAA 2003-16567; Airspace Docket 03-ANM-14]

**Proposed Revision of Class E Airspace; Sunriver, OR**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This proposal would revise Class E airspace at Sunriver Airport, Sunriver, OR. The establishment of a new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) requires additional Class E airspace extending upward from 700 feet or more above the surface of the earth north of the Sunriver Airport. This additional Class E airspace is necessary for the safety of Instrument Flight Rules (IFR) aircraft executing the new RNAV GPS SIAPs at Sunriver Airport.

**DATES:** Comments must be received by April 19, 2004.

**ADDRESSES:** Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590-0001. You must identify the docket number, FAA-2003-16567 Airspace Docket No. 03-ANM-14, at the beginning of your comments. You may also submit comments on the Internet at <http://dms.dot.gov>. You may review the public docket containing the proposal, any comments received, and any final dispositions in person in the Docket Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone number 1-800-647-5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the Office of the Regional Air Traffic Division, Northwest Mountain Region, Federal Aviation Administration, Airspace Branch, ANM-520, 1601 Lind Avenue, SW., Renton, WA 98055.

**SUPPLEMENTARY INFORMATION:****Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify Docket FAA-2003-16567; Airspace Docket 03-ANM-14, and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit, with those comments, a self-addressed stamped postcard on which the following statement is made: "Comments to Docket FAA-2003-16567; Airspace Docket 03-ANM-14." The postcard will be date/time stamped and returned to the commenter.

**Availability of NPRM**

An electronic copy of this document may be downloaded through the Internet at <http://dms.dot.gov>. Recently published rulemaking documents can also be accessed through the FAA's Web page at <http://www.faa.gov> or the Superintendent of Document's Web page at <http://www.access.gpo.gov/nara>.

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, 1601 Lind Avenue, SW., Renton, WA, 98055. Communications must identify both document numbers for this notice. Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, at 202-267-9677, to request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

**The Proposal**

This action proposes to amend title 14 Code of Federal Regulations, part 71 (14 CFR part 71) by revising Class E airspace at Sunriver Airport, Sunriver, OR. The establishment of a new RNAV GPS SIAPs requires additional Class E controlled airspace extending upward from 700 feet or more above the surface of the earth north of the Sunriver Airport. This additional Class E airspace is necessary for the safety of IFR aircraft executing the new RNAV GPS SIAPs at Sunriver Airport. Controlled airspace is developed where there is a requirement for IFR services, which includes arrival, departures, and transitioning to/from the terminal or en route environment.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9L dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

## The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

### PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

#### § 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9L, Airspace Designations and Reporting Points, dated September 2, 2003, and effective September 16, 2003, is amended as follows.

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

\* \* \* \* \*

#### ANM OR E5 Sunriver, OR (Revised)

Sunriver Airport, Sunriver, OR  
(Lat. 43°52'35"N., long. 121°27'11"W.)  
Deschutes VORTAC

(Lat. 43°51'10"N., long. 121°18'13"W.)  
That airspace extending upward from 700 feet above the surface of the earth within a 6.1 mile radius of the Sunriver Airport and within 3.5 miles each side of the Deschutes VORTAC 196° radial extending from the 6.1 mile radius to 14 miles north of the airport.

\* \* \* \* \*

Issued in Seattle, Washington, on February 18, 2004.

**Raul C. Treviño,**

*Acting Manager, Air Traffic Division,  
Northwest Mountain Region.*

[FR Doc. 04–5033 Filed 3–4–04; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 888

[Docket No. 2003N–0561]

### Orthopedic Devices; Effective Date of Premarket Approval of the Hip Joint Metal/Polymer or Ceramic/Polymer Semiconstrained Resurfacing Cemented Prosthesis

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Proposed rule; opportunity to request a change in classification.

**SUMMARY:** The Food and Drug Administration (FDA) is proposing to require the filing of a premarket approval application (PMA) or a notice of completion of a product development protocol (PDP) for the hip joint metal/polymer or ceramic/polymer semiconstrained resurfacing cemented prosthesis. The agency is summarizing its proposed findings regarding the degree of risk of illness or injury intended to be eliminated or reduced by requiring the device to meet the statute's approval requirements as well as the benefits to the public from the use of the device. The agency also is proposing to revise the name and identification of the device. In addition, FDA is announcing the opportunity for interested persons to request the agency to change the classification of the device based on new information. FDA is taking this action under the Federal Food, Drug, and Cosmetic Act (the act) as amended by the Medical Device Amendments of 1976 (the 1976 amendments), the Safe Medical Devices Act of 1990 (the SMDA), the Food and Drug Administration Modernization Act of 1997 (FDAMA), and the Medical Device User Fee and Modernization Act of 2002 (MDUFMA).

**DATES:** Submit written or electronic comments by June 3, 2004; submit written or electronic requests for a change in classification by March 22, 2004.

**ADDRESSES:** Submit written comments or requests for a change in classification to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to <http://www.fda.gov/dockets/ecomments>.

**FOR FURTHER INFORMATION CONTACT:** Pei Sung, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2036.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Section 513 of the act (21 U.S.C. 360(c)) requires FDA to classify medical devices into one of three regulatory categories (classes): Class I (general controls), class II (special controls), and class III (premarket approval). Generally, FDA has classified, or is classifying, devices that were on the market before May 28, 1976, the date of enactment of the 1976 amendments, and devices marketed on or after that date

that are substantially equivalent to such devices. For convenience, this preamble refers to the devices that were on the market before May 28, 1976, and the substantially equivalent devices that were marketed on or after that date as “preamendments devices.”

Section 515(b)(1) of the act (21 U.S.C. 360e(b)(1)) establishes the requirement that a preamendments device that FDA has classified into class III is subject to premarket approval. An applicant may commercially distribute a preamendments class III device without an approved PMA or a notice of completion of a PDP until 90 days after the effective date that FDA issues in a final rule requiring premarket approval for the device, or 30 months after final classification of the device under section 513 of the act, whichever is later. Also, an applicant may commercially distribute a preamendments device subject to the rulemaking procedure under section 515(b) without an approved investigational device exemption (IDE) part 812 (21 CFR part 812) until the date FDA identifies in the final rule requiring the submission of a PMA or PDP for the device. At that time, an applicant must submit an IDE if a PMA has not been submitted or a PDP has not been declared completed.

Section 515(b)(2)(A) of the act provides a proceeding to issue a final rule to require premarket approval. The agency must initiate the process by publishing a notice of proposed rulemaking in the **Federal Register**. The notice must contain: (1) The proposed rule, (2) the proposed findings with respect to the degree of risk of illness or injury designed to be eliminated or reduced by requiring the device to have an approved PMA or a declared completed PDP and the benefit to the public from the use of the device, (3) an opportunity to submit comments on the proposed rule and the proposed findings, and (4) an opportunity to request reclassification of the device based on relevant new information.

If FDA receives a request to reclassify the device within 15 days of publication of the notice, section 515(b)(2)(B) of the act requires the agency to take the following action. Within 60 days of the publication of the notice, FDA must consult with the appropriate FDA advisory committee and publish a notice denying the requested reclassification or announcing the agency's intent to initiate a proceeding to reclassify the device under section 513(e) of the act. If FDA does not initiate such a proceeding, section 515(b)(3) of the act requires FDA, after the close of the comment period on the proposed

rule and consideration of any comments received, to: (1) Issue a final rule requiring premarket approval, or (2) publish a notice terminating the proceeding. If FDA terminates the proceeding, FDA must initiate reclassification of the device under section 513(e) of the act. FDA does not have to initiate reclassification of the device if the reason for termination is that the device is a banned device under section 516 of the act (21 U.S.C. 360f).

If a proposed rule to require premarket approval for a preamendments device becomes final, section 501(f)(2)(B) of the act (21 U.S.C. 351(f)(2)(B)) requires the applicant to file a PMA or notice of completion of a PDP for any such device no later than 90 days after the date that FDA identifies in the final rule, or 30 months after final classification of the device under section 513 of the act, whichever is later. If an applicant does not file a PMA or notice of completion of a PDP by the later of the two dates, commercial distribution of the device must cease. An applicant may distribute the device for investigational use, if the applicant complies with the IDE regulations. If the applicant does not file a PMA or notice of completion of a PDP by the later of the two dates, and no IDE is in effect, the device is deemed to be adulterated within the meaning of section 501(f)(1)(A) of the act. The device also is subject to seizure and condemnation under section 304 of the act (21 U.S.C. 334) if its distribution continues. Shipment of the device in interstate commerce is subject to an injunction under section 302 of the act (21 U.S.C. 332). The individuals responsible for such shipment are subject to prosecution under section 303 of the act (21 U.S.C. 333). In the past, FDA has requested manufacturers to take action to prevent the further use of devices that do not have a filed PMA. FDA may determine that such a request is appropriate for the hip joint metal/polymer or ceramic/polymer semiconstrained resurfacing cemented prosthesis.

If a proposed rule to require premarket approval for a preamendments device becomes final, the act does not permit the agency to extend the 90-day period after the rule's effective date for filing an application or a notice. The House Report on the amendments states "the thirty month 'grace period' afforded after classification of a device into class III \* \* \* is sufficient time for manufacturers and importers to develop the data and conduct the investigations necessary to support an application for

premarket approval." (H. Rept. 94-853, 94th Cong., 2d Sess. 42 (1976).)

The SMDA added section 515(i) to the act requiring FDA to review the classification of preamendments class III devices that do not have a final rule issued requiring the submission of PMAs. After its review, FDA must determine whether or not each device should be reclassified into class I or class II or remain in class III. For devices remaining in class III, the SMDA directs FDA to develop a schedule for issuing regulations to require premarket approval. The SMDA does not prevent FDA from proceeding immediately to rulemaking under section 515(b) of the act on specific devices, in the interest of public health, independent of the procedures of section 515(i) of the act. Proceeding directly to rulemaking under section 515(b) of the act is consistent with Congress' objective in enacting section 515(i) of the act, i.e., that preamendments class III devices for which PMAs or notices of completed PDPs have not been required either be: (1) Reclassified to class I or II, or (2) subject to premarket approval requirements. In this proposal, interested persons have the opportunity to request reclassification of the hip joint metal/polymer or ceramic/polymer semiconstrained resurfacing cemented prosthesis.

#### *A. Classification of the Hip Joint Metal/Polymer Semiconstrained Resurfacing Cemented Prosthesis*

In the **Federal Register** of September 4, 1987 (52 FR 33686), FDA issued a final rule classifying the hip joint metal/polymer semiconstrained resurfacing cemented prosthesis into class III. The preamble to the proposed rule to classify this device (47 FR 29052, July 2, 1982) included the recommendation of the Orthopedic Device Classification Panel (the Panel), an FDA advisory committee, regarding the classification of the device. The Panel recommended that this device be classified into class II, and identified the following risks to health presented by the device: Loss or reduction of joint function, adverse tissue reaction, and infection. The Panel believed that controls to the design, material composition, and mechanical properties of the device, such as its flexibility, rigidity, strength, and surface finish, were necessary to address these risks to health. The Panel also believed that the labeling of the device should include information on the device's dimensions, kinematics, strength, and wear characteristics. The Panel believed that sufficient information existed to establish a performance standard to

provide reasonable assurance of the safety and effectiveness of the device.

FDA disagreed with the Panel's recommendation and proposed (47 FR 29052) that the hip joint metal/polymer semiconstrained resurfacing cemented prosthesis be classified into class III. FDA believed that general controls, either alone or in combination with performance standards applicable to class II devices, were insufficient to provide reasonable assurance of the safety and effectiveness of the device. FDA believed that there was insufficient information to establish a performance standard for the device and that the device presented unreasonable risks of illness or injury because there were not adequate data to ensure the safe and effective use of the device.

The preamble to the final rule (52 FR 33686) classifying the hip joint metal/polymer semiconstrained resurfacing cemented prosthesis into class III advised that the earliest date FDA could require PMAs or notices of completion of PDPs for the device would be 90 days after FDA issued a rule requiring premarket approval for the device. In the **Federal Register** of January 6, 1989 (54 FR 550), FDA published a notice of intent to initiate proceedings to require premarket approval of 31 preamendments class III devices. The notice described the factors FDA took into account in establishing priorities for proceedings under section 515(b) of the act for issuing final rules requiring that preamendments class III devices have approved PMAs or declared completed PDPs. In the **Federal Register** of May 6, 1994 (59 FR 23731), FDA announced the availability of its preamendments class III devices strategy document. The agency categorized the hip joint metal/polymer semiconstrained resurfacing cemented prosthesis as a high priority Group 3 device, a device the agency considered to have low probability of being reclassified into class I or class II. Subsequently, FDA determined that the ceramic/polymer semiconstrained resurfacing cemented prosthesis is substantially equivalent to the metal/polymer semiconstrained resurfacing cemented prosthesis. Accordingly, FDA is commencing a proceeding under section 515(b) of the act to require that the metal/polymer or ceramic/polymer semiconstrained resurfacing cemented prosthesis have an approved PMA or declared completed PDP.

#### *B. Dates New Requirements Apply*

In accordance with section 515(b) of the act, FDA is proposing to require an applicant to file a PMA or notice of completion of a PDP with the agency for

the hip joint metal/polymer or ceramic/polymer semiconstrained resurfacing cemented prosthesis by no later than 90 days after FDA publishes a final rule based on this proposal. An applicant whose device was in commercial distribution before May 28, 1976, or whose device FDA has determined to be substantially equivalent to such a device, may continue to market the hip joint metal/polymer or ceramic/polymer semiconstrained resurfacing cemented prosthesis during FDA's review of the PMA or notice of completion of a PDP. FDA intends to review any PMA for the device within 180 days and any notice of completion of a PDP for the device within 90 days of the filing date. FDA cautions that under section 515(d)(1)(B)(I) of the act, the agency may not enter into an agreement to extend the review period for a PMA beyond 180 days unless the agency finds that " \* \* \* the continued availability of the device is necessary for the public health."

Under § 812.2(d), FDA intends that the preamble to any final rule based on this proposal will inform the applicant about limits on certain exemptions under the IDE regulations. No later than 90 days after FDA publishes a final rule requiring an applicant to file a PMA or notice of completion of a PDP, the exemptions in § 812.2(c)(1) and (c)(2) of the IDE regulations for preamendments class III devices will cease to apply to any hip joint metal/polymer or ceramic/polymer semiconstrained cemented prosthesis which is: (1) Not legally on the market on or before that date; or (2) legally on the market on or before that date but for which a PMA or notice of completion of a PDP is not filed by that date, or for which PMA approval has been denied or withdrawn.

If an applicant does not submit a PMA, notice of completion of a PDP, or an IDE application for the hip joint metal/polymer or ceramic/polymer semiconstrained cemented prosthesis by no later than 90 days after FDA publishes a final rule requiring premarket approval for the device, commercial distribution of the device must cease. FDA cautions that manufacturers not planning to submit a PMA or notice of completion of a PDP immediately, should submit IDE applications to FDA no later than 60 days after the final rule publishes. FDA considers investigations of the hip joint metal/polymer or ceramic/polymer semiconstrained cemented prosthesis to pose a significant risk as defined in the IDE regulation.

### C. Description of the Device

The hip joint metal/polymer or ceramic/polymer semiconstrained resurfacing cemented prosthesis is an implanted device intended to replace a portion of the hip joint with minimal bone resection. FDA is proposing the following device identification for the hip joint metal or ceramic/polymer semiconstrained resurfacing cemented prosthesis to include ceramic/polymer semiconstrained resurfacing cemented hip joint prostheses that the agency has determined to be substantially equivalent (cleared) under § 888.3410 (21 CFR 888.3410):

A hip joint metal/polymer or ceramic/polymer semiconstrained resurfacing cemented prosthesis is a two-part device intended to be implanted to replace the articulating surfaces of the hip while preserving the femoral head and neck. The device limits translation and rotation in one or more planes via the geometry of its articulating surfaces. It has no linkage across the joint. This generic type of device includes prostheses that consist of a femoral cap component made of a metal alloy, such as cobalt-chromium-molybdenum, or a ceramic material, that is placed over a surgically prepared femoral head, and an acetabular resurfacing polymer component. Both components are intended for use with bone cement (21 CFR 888.3027).

### D. Proposed Findings With Respect to Risks and Benefits

As required by section 515(b) of the act, FDA is publishing its findings regarding: (1) The degree of risk of illness or injury designed to be eliminated or reduced by requiring an approved PMA or completed PDP for the hip joint metal/polymer or ceramic/polymer semiconstrained resurfacing cemented prosthesis, and (2) the benefits to the public from the use of the device.

### E. Risk Factors

In the early 1950s, Townley (Ref. 1) designed a new type of hip joint prosthesis, the total articular resurfacing arthroplasty (TARA). The TARA is a type of hip surface replacement (HSR) prosthesis. A metallic component covers the articulating surface of the femoral head component of the device. The articulating surface of the acetabulum is resurfaced with a thin ultra-high molecular weight polyethylene (UHMWPE) shell. Because of the high failure rates of the TARA's acetabular component and the loosening of its femoral component, this device is no longer in use (Ref. 2). Since then, several slightly different HSR joint prosthesis designs have been marketed and investigated. These include metal-backed UHMWPE acetabular cups,

ceramic femoral resurfacing components, and porous-coated femoral and acetabular components.

Based on the published literature and other publicly available information, FDA has determined that the following risks to health are associated with the use of the hip joint metal/polymer semiconstrained resurfacing cemented prosthesis:

1. *Revision*—Due to mechanical aseptic failure, revision surgery is a major risk to health associated with implanting the metal/polymer or ceramic polymer semiconstrained resurfacing hip prosthesis. Revision surgery is a second major surgery to remove the device and replace it with a total hip replacement (THR).

Clinical investigations published before the device was classified in 1987 reported unacceptably high revision rates. These studies and studies published after the device was classified report revision rates up to 11.2 to 47.0 percent for followup periods ranging from 2 to 10 years for HSR arthroplasty with metal/polymer articulation (Refs. 3 to 9). With conventional THR, the 5- to 7-year failure rates range from 1.0 to 1.7 percent and 10-year failure rates are approximately 3 percent (Ref. 3).

In 1981, Head (Ref. 4) reported a 34 percent failure rate for the Wagner HSR prosthesis. The average time to failure of the device was 1½ years. He concluded that the causes of its high failure rate were: (1) A high susceptibility to avascular necrosis of the femoral head, (2) the younger ages of the patients, and (3) the device's biomechanical design.

In 1984, Head (Ref. 5) reported an overall anticipated failure rate for another HSR prosthesis. The rate was 34 percent (11.9 percent actual and 22 percent anticipated) after an average patient followup of 3.3 years. He predicted the "anticipated" device failure rate from radiographic evidence indicating device component failure in 15 patients who had experienced intermittent but not significant pain. Head believed that the radiographic evidence and pain were predictive of future failure and revision. He attributed the high incidence of component failure to: (1) The patients' high activity level, (2) poor cement distribution with resultant micro motion, and (3) increased frictional torque of the larger-diameter acetabular component.

Also in 1984, Capello et al. (Ref. 6) reported a 14.5 percent revision rate and a 10 percent loosening rate for the Indiana Conservative HSR prosthesis at 2 to 7 year's followup. They believed that this failure rate and non-traumatic loosening rate were unacceptable.

In 1986, Ritter and Gioe (Ref. 7) compared the Indiana Conservative HSR prosthesis and the Trapezoidal 28 (T-28) conventional THR implanted in the same patient. After an average patient followup of 5.4 years, failure rates were six times greater in patients implanted with the resurfacing design hip joint prosthesis (26 percent) than in patients implanted with the T-28 THR (4 percent). The complications of the resurfacing hip joint prosthesis group included femoral and acetabular loosening and femoral neck fracture.

In 1987, Kim et al. (Ref. 8) reported a comparison between the THARIES hip joint prosthesis, a type of HSR prosthesis, and two conventional THRs, the Biomet Charnley and the T-28 hip joint prostheses, in patients younger than 40 years old. Patient followup was up to 8.5 years. Kaplan-Meier failure rates were calculated at 3 and 5 years. In the highest risk patients, the younger non-rheumatoid arthritis (non-RA) and non-juvenile rheumatoid arthritis (non-JRA) patients, the conventional THR patients had significantly better hip functions than the patients with the THARIES prosthesis. In the lowest risk RA or JRA patients, the THARIES prosthesis appeared to perform as well as conventional THR. Kim et al. predicted that all acrylic-fixed hip joint prostheses, THARIES or THRs, would undergo early mechanical loosening in non-RA, non-JRA patients younger than 30 years old. They advised against the use of acrylic cement fixation of THARIES prostheses in patients younger than 30.

In 1990, Faris et al. (Ref. 9) reported on 64 Indiana Conservative HSR prostheses implanted in 61 patients with an average followup of 6.8 years. There was a 47 percent failure rate. Acetabular failure occurred in 20 patients, femoral failure occurred in 18 patients, and both acetabular and femoral failure occurred in 13 patients. Faris et al. concluded, "There seems to be little or no place for this design in contemporary hip joint arthroplasty."

In 1994, Mesko et al. (Ref. 3) reported a 13.2 percent revision rate for the TARA prosthesis at a mean patient followup of 8 years. The revised patients were an average of 7 years younger than the non-revised patients. The cemented TARA prosthesis had better intermediate to long-term success than other cemented resurfaced hip joint prostheses. However, the TARA prosthesis did not compare favorably to the conventional THR's lower 5- to 7-year failure rates of 1.0 to 1.7 percent and 10-year failure rates of 3 percent.

HSR was developed as an alternative to conventional THRs because of its

minimal requirements for bone removal. However, the failure rates of the HSRs reported in section E.1. of this document (Refs. 3 to 9) are significantly higher compared to the failure rates of conventional THRs. In addition, due to the inadequate UHMWPe thickness of some early HSR designs, biomechanical analyses indicated that device loosening is the predominate reason for the high failure rates of the HSR prosthesis compared to conventional THRs.

Potential etiologies for the high loosening rates cited previously include the following (Refs. 10 to 16): (1) Inadequate device design—impingement between the rim of the acetabular cup and the femoral neck, increased friction torque of the larger acetabular component, and inadequate implant-cement and/or cement-bone interfaces, (2) UHMWPe wear debris associated with macrophage response, cellular membrane development, granuloma formation and/or bone resorption, (3) surgical technique error such as inadequate cementing technique or cement distribution, inadequate bone strength beneath the components, various placement positions of the device, i.e., varus or valgus positions that cause toggling within the femoral intramedullary canal, and (4) higher physical activity levels of younger patients.

**2. Loss or Reduction of Hip Joint Function**—Improper design or inadequate mechanical properties of the device, such as lack of strength and resistance to wear, may result in a loss or reduction of hip joint function due to excessive wear, fracture, dislocation and/or deformation of the device components.

**3. Adverse Tissue Reaction**—Inadequate biological or mechanical properties of the device, such as lack of biocompatibility and resistance to wear, may result in an adverse tissue reaction. This reaction is due to dissolution or erosion of the device's articulating surfaces and release of debris to surrounding tissues and the systemic circulation.

**4. Infection**—The presence of an implanted device within the body may lead to an increased risk of infection.

FDA notes that loss or reduction of hip joint function, adverse tissue reaction, and infection are risks to health common to all implanted hip joint prostheses.

#### *F. Benefits of the Device*

The hip joint metal/polymer or ceramic/polymer semiconstrained resurfacing cemented prosthesis is an implanted device intended to replace a portion of the hip joint with minimal

bone resection. The potential benefits intended from implantation of the device are relief of intense, disabling pain and restoration of hip joint function. This would result in a return to daily activities and an improved quality of life, especially in young patients.

In 1984, Amstutz et al. (Ref. 17) reported on the THARIES TARA prosthesis and T-28 THR for the treatment of primary hip osteoarthritis after a 6-year followup period. They concluded that the THARIES prosthesis appeared to be an acceptable alternative to THR after intermediate followup for 38 months. They stated that HSR could become a preferred treatment for primary osteoarthritis, "if these results are maintained after longer follow-up or are improved using better technique and a metal backing."

In 1987, Kim et al. reported that for low risk non-RA, non-JRA patients younger than 40 years old, the THARIES prosthesis appeared to perform as well as conventional THR after 3 to 5 years of followup (Ref. 8).

FDA has determined from review of the literature that the major causes of device loosening and subsequent device failure necessitating revision appear to be: (1) UHMWPe or metal particulate wear debris-induced bone resorption, and (2) high patient activity levels. Both cause increased wear and subsequent device failure necessitating revision.

Based on its evaluation of the benefits and risks described previously, FDA has concluded that the safety and effectiveness of the hip joint metal/polymer or ceramic/polymer semiconstrained resurfacing cemented prosthesis have not been established by valid scientific evidence as defined in 21 CFR 860.7.

## **II. PMA Requirements**

A PMA for the hip joint metal/polymer or ceramic/polymer semiconstrained resurfacing cemented prosthesis must include the information required by section 515(c)(1) of the act and § 814.20 (21 CFR 814.20) of the PMA regulations. The PMA should include a detailed discussion of risks as well as a discussion of the effectiveness of the device for which premarket approval is sought. In addition, a PMA should include all data and information on: (1) Any risks known, or that should be reasonably known to the applicant that were not identified in this proposed rule; (2) the effectiveness of the specific hip joint metal/polymer or ceramic/polymer semiconstrained resurfacing cemented prosthesis that is the subject of the submission; and (3) full reports of all device preclinical and clinical



information from the safety and effectiveness investigations for which premarket approval is sought.

A PMA should include valid scientific evidence as defined in 21 CFR 860.7, obtained from well-controlled clinical studies or another form of valid scientific evidence. In addition to the basic requirements for a PMA described in § 814.20(b)(6)(ii), the agency recommends that studies use a protocol that meet the criteria described further in section II of this document.

An applicant should submit the PMA in accordance with FDA's "Premarket Approval Manual," which is available on the Internet at <http://www.fda.gov/cdrh/devadvice>.

#### A. Preclinical Testing

FDA recommends the following types of preclinical testing to establish reasonable assurance of the safety and effectiveness of the hip joint metal/polymer or ceramic/polymer semiconstrained resurfacing cemented prosthesis:

1. *Materials Information*—This information should include, but is not limited to, chemistry; impurities identification and quantification; physical, chemical, and mechanical properties; and manufacturing process description. If the acetabular component is modular, you should include locking mechanism characterization. (See the FDA guidance document entitled "Guidance Document for Testing Non-Articulating, 'Mechanically Locked' Modular Implant Components," which is available on the Internet at <http://fda.gov/cdrh/devadvice> (Facts-on-Demand No. 916).

2. *Device Characteristics*—These characteristics should include, but are not limited to: Wear rates; debris size, geometry, and distribution; wear mechanism and wear markings; frictional torque measurement, axial and shear loading characteristics per American Society for Testing and Materials consensus standards and impingement latitude; implant-cement and cement-bone interfacial bonding strength, e.g., shear and tensile strengths; and UHMWPe thickness.

3. *Biocompatibility Information*—Biocompatibility information for finished devices made of a new hip-resurfacing material should be in accordance with ISO-10993 standards, "Biological Evaluation of Medical Devices," 21 CFR parts 1 to 16.

#### B. Clinical Testing

FDA believes that clinical testing is necessary to establish the reasonable assurance of the safety and effectiveness of the hip joint metal/polymer or

ceramic/polymer semiconstrained resurfacing cemented prosthesis. The clinical study should distinguish between the intended function of the device and the clinical benefit to the patient. The study also should demonstrate both statistical significance and clinical utility.

FDA recommends that device specific considerations include the following:

1. *Primary and Secondary Endpoints*—The applicant should identify the primary endpoints, such as reduced pain, improved function, and radiographic confirmation of device placement and secondary endpoints, such as improved quality of life and return to activities.

2. *Patient Evaluation*—Validated patient evaluation system(s) should be capable of demonstrating both patient improvement and deterioration. After enrolling patients, you should obtain baseline measurements. Subsequently, at each patient followup interval, you should measure the variables using the same patient evaluation method(s) and the same radiographic evaluation showing the position of the prosthesis in the skeleton and the condition of the surrounding bone.

3. *Patient Evaluation Systems*—These systems should include patient demographics (osteoarthritis or rheumatoid arthritis disease severity classification, comorbidities, medications, allergies, prior surgery, smoking, etc.); Harris Hip Score Evaluation or Western Ontario and McMaster University (WOMAC) Osteoarthritis Index; radiographic evaluation for subsidence and fracture; and quality of life evaluation, such as the SF-36 or SF-12 Health Survey.

4. *Patient Evaluation Schedule*—Patient evaluations should occur at regular intervals, such as baseline preoperative, intraoperative, and postoperative at 6 weeks, 3 months, 6 months, 12 months, and 24 months.

FDA recommends that the general clinical study considerations include the following:

1–1. *Study Design*—The applicant should evaluate the device in a prospective, randomized, clinical trial that uses adequate controls or other form of valid scientific evidence. The trial should answer all safety and effectiveness questions concerning the device, including its risk to benefit ratio. These questions should relate to the pathophysiologic effects that the device produces, as well as the primary and secondary endpoints used to analyze safety and effectiveness. You should define study endpoints and success. The study should have objectively measurable endpoints. The study design

should include an appropriate rationale, supported by background literature, and a clear study hypothesis statement.

The study should obtain statistical and clinical significance for the primary and secondary endpoints. For example, for each primary endpoint, you should use an alpha level of 0.05 and a beta level of 0.2. However, under certain restricted circumstances, a clinically significant result may be documented without statistical significance.

FDA recommends that the applicant conduct the study in three phases: enrollment, baseline measurement, and followup. A preferred method for subject enrollment is randomization by a central monitor.

The study should have a well-defined patient population. The patient population should be as homogenous as possible to minimize selection bias and reduce variability. Sample size justification should show that enough patients are enrolled to attain statistically and clinically meaningful results. You should carefully define inclusion and exclusion criteria. Inclusion criteria should include the patient's potential for benefit, the ability to detect a benefit in the patient, the absence of contraindications and competing risk, and assurance of patient compliance.

In a heterogeneous sample, stratification of patient groups participating in a multicenter clinical trial may be necessary to analyze homogeneous subgroups and minimize potential bias. FDA recommends that the applicant include a sufficient number of patients from each subgroup analysis to allow for stratification by pertinent demographic characteristics. Initial patient screening according to the inclusion and exclusion criteria and compliance of the patient population is recommended to minimize dropout. Patient exclusion due to dropout or loss more than 15 percent may invalidate the study due to bias potential. You should account for all missing data, such as dropouts. In the data analysis, you should document circumstances and procedures used to ensure patient compliance.

FDA recommends that the applicant evaluate and minimize potential sources of error, including selection bias, information bias, disease misclassification bias, comparison bias, or any other potential bias. The validity of these measurement scales should ensure that the treatment effect being measured reflects the intended use.

The applicant should measure baseline variables, e.g., age, gender, activity level, and other variables at the time of treatment. You should measure



other variables during the study as needed to completely characterize the particular device's safety and effectiveness. Also, throughout the study, you should record and evaluate adverse effects, complications, failure, revisions, and deaths.

FDA recommends rigorous monitoring to assure that the study data are collected in accordance with the study protocol. Attentive, unbiased monitors contribute prominently to a successful study.

For any other testing needed to assure a well-controlled study and meaningful results, you should describe the testing sufficiently to demonstrate its utility and adequacy. This is dependent on what the applicant intends to measure or what the expected treatment effect is based on each device's intended use.

The agency recommends the involvement of a biostatistician to provide proper guidance in the planning, design, conduct, and analysis of a clinical study.

**1–2. Data Analysis**—The agency recommends analyzing the following types of data: Effectiveness primary endpoints measured by patient evaluation systems and radiography; effectiveness secondary endpoints; safety endpoints, including adverse events, complications, device failures, revisions, and deaths; survival analyses (time to event or revision; and patient satisfaction. The analyses should include actual patient data.

There should be sufficient description and documentation of the statistical analysis methods, their appropriateness, and the test results. This should include complete descriptions of the methods, comparison group selection, sample size justification, stated hypothesis test(s), underlying assumptions, population demographics, study site pooling justification, clear data presentation, and clear discussion of the conclusions. The data analysis should relate to the medical claims. It should evaluate the comparability between treatment groups and control groups, including historical controls. The analysis should also account for all enrolled patients, including those lost to followup for any reason and a discussion of the impact of their loss. This should include both the evaluable population and the intent to treat population. The applicant should report actual patient data used to determine the result.

**1–3. Data Presentation**—The applicant should present effectiveness clinical findings in a series of tables that include complete patient accounting. FDA recommends using a table for each followup time point. Each table should show the number of patients in each

treatment group, the number of patients actually evaluated, the number of patients with missing data, and reasons for the missing data.

If the evaluation uses subcategories of rating specific clinical observations, (e.g., the pain, function, motion, subcategories of the Harris Hip Scoring System), you should include the number of patients in each disease rating category.

Similarly, FDA recommends that you present safety data in a series of tables for each time point, including the number of patients expected at that time point and the number of patients with adverse effects, complications, device failures, and revisions. You should include the types of adverse events, complications, device failures, and revisions.

Use of Kaplan Meier life tables to present actuarial survivorship data for the acetabular component and femoral component and the complete device is recommended. You should include the actual patient data used to generate the presentation.

The applicant should analyze and explain the reasons for missing data and the impact of the missing data.

### C. Labeling

The applicant should provide copies of all proposed labeling for the device. You should include any information, literature, or advertising that constitutes labeling under section 201(m) of the act (21 U.S.C. 321(m)). The general labeling requirements for medical devices are in 21 CFR part 801. Information in the PMA should completely support the intended use statement in the labeling, including specific indications for use, specific patient populations, and directions for use. This information should include a detailed step-by-step illustrated surgical technique manual.

### III. PDP Requirements

An applicant may submit a PDP for the hip joint metal/polymer or ceramic/polymer semiconstrained resurfacing cemented prosthesis in lieu of a PMA. A PDP must follow the procedures outlined in section 515(f) of the act and should include the following: A description of the device, preclinical trial information, clinical trial information, a description of the manufacturing and processing of the device, labeling of the device, all relevant information about the device, progress reports, and records of the trials conducted under the protocol on the safety and effectiveness of the device for which the completed PDP is sought.

FDA's Device Advice Web site has comprehensive updated information on PDP approval, including the guidance document entitled "Contents of a Product Development Protocol" issued on July 27, 1998, on the Internet at <http://www.fda.gov/cdrh/devadvice>. The guidance document is also available from CDRH's Facts on Demand at 1–800–899–0381 or 301–827–0111. Specify number 473 when prompted for the document shelf number.

### IV. Opportunity to Request Reclassification

Before requiring the filing of a PMA or a notice of completion of a PDP for a device, section 515(b)(2)(A)(i) through (b)(2)(A)(iv) of the act and 21 CFR 860.132 require FDA to provide an opportunity for interested persons to request reclassification of the device based on new information. Any proceeding to reclassify the device is under the authority of section 513(e) of the act.

You may submit a reclassification request for the hip joint metal/polymer or ceramic/polymer semiconstrained resurfacing cemented prosthesis in a reclassification petition that contains the information required under § 860.123 (21 CFR 860.123). This includes any new information relevant to the reclassification of the device.

To ensure timely filing of a reclassification petition, submit your petition to the Division of Dockets Management (see **ADDRESSES**) and not to the address provided in § 860.123(b)(1). If you submit a timely reclassification petition for the hip joint metal/polymer or ceramic/polymer semiconstrained resurfacing cemented prosthesis, FDA will: (1) Consult with the Orthopedic and Rehabilitation Devices Advisory Panel about reclassifying the device, and (2) publish an order in the **Federal Register** either denying the request or announcing the agency's intent to reclassify the device in accordance with section 513(e) of the act and 21 CFR 860.130 of the regulations.

### V. References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 5 p.m., Monday through Friday.

1. Townley, C.O., "Hemi and Total Articular Replacement Arthroplasty of the Hip With the Fixed Femoral Cup," *Orthopedic Clinics of North America*, 13: 869–894, 1982.

2. Mont, M.A., A.D. Rajadhyaksha, and D.S. Hungerford, "Outcomes of Limited Femoral Resurfacing

Arthroplasty Compared With Total Hip Arthroplasty for Osteonecrosis of the Femoral Head," *Journal of Arthroplasty*, 16 suppl. 1: 134–139, 2001.

3. Mesko, J.W., F.G. Goodman, and S. Stanescu, "Total Articular Replacement Arthroplasty: A Three- to Ten-Year Case-Controlled Study," *Clinical Orthopaedics and Related Research*, No. 300: 168–177, 1994.

4. Head, W.G., "Wagner Surface Replacement Arthroplasty of the Hip - Analysis of Fourteen Failures in Forty-One Hips," *Journal of Bone and Joint Surgery*, 63-A: 420–427, 1981.

5. Head, W.C., "Total Articular Resurfacing Arthroplasty—Analysis of Component Failure in Sixty-Seven Hips," *Journal of Bone and Joint Surgery*, 66-A: 28–34, 1984.

6. Capello, W.N., G.W. Misamore, and T.M. Trancik, "The Indiana Conservative (Surface Replacement) Hip Arthroplasty," *Journal of Bone and Joint Surgery*, 66-A: 518–528, 1984.

7. Ritter, M.A. and T.J. Gioe, "Conventional Versus Resurfacing Total Hip Arthroplasty: A Long-Term Prospective Study of Concomitant Bilateral Implantation of Prostheses," *Journal of Bone and Joint Surgery*, 68-A: 216–225, 1986.

8. Kim, W.C., T. Grogan, H.C. Amstutz, et al., "Survivorship Comparison of THARIES and Conventional Hip Arthroplasty in Patients Younger Than 40 Years Old," *Clinical Orthopaedics and Related Research*, No. 214: 269–277, 1987.

9. Faris, P.M., M.A. Ritter, R. Bicknell, et al., "Long-Term Follow-Up of the Indiana Conservative Resurfacing Hip Arthroplasty," *Seminars in Arthroplasty*, 1: 12–15, 1990.

10. D.W. Howie, B.L. Cornish, and B. Vernon-Roberts, "Resurfacing Hip Arthroplasty: Classification of Loosening and the Role of Prosthesis Wear Particles," *Clinical Orthopaedics and Related Research*, 255: 144–159, 1990.

11. R. Huiskes, P. Strens, W. Vroemen, et al., "Post-Loosening Mechanical Behavior of Femoral Resurfacing Prostheses," *Clinical Materials*, 6: 37–55, 1990.

12. Wiadrowski, T.P., M. McGee, B.L. Cornish, et al., "Peripheral Wear of Wagner Resurfacing Hip Arthroplasty or Arthroplasty Acetabular Components," *Journal of Arthroplasty*, 6: 103–107, 1991.

13. Kilgus, D.J., F.J. Dorey, G.A.M. Finerman, et al., "Patient Activity, Sports Participation, and Impact Loading on the Durability of Cemented Total Hip Replacements," *Clinical Orthopaedics and Related Research*, 269: 25–31, 1991.

14. Mai, M.T., T.P. Schmalzried, F.J. Dorey, et al., "The Contribution of Frictional Torque to Loosening at the Cement-Bone Interface in Tharies Hip Replacements," *Journal of Bone and Joint Surgery*, 78-A: 505–510, 1996.

15. Campbell, P., J. Mirra, and H.C. Amstutz, "Viability of Femoral Heads Treated With Resurfacing Arthroplasty," *Journal of Arthroplasty*, 15: 120–122, 2000.

16. Watanabe, Y., N. Shiba, S. Matsuo, et al., "Biomechanical Study of the Resurfacing Hip Arthroplasty: Finite Element Analysis of the Femoral Component," *Journal of Arthroplasty*, 15: 505–511, 2000.

17. Amstutz, H.C., B.J. Thomas, R. Jinnah, et al., "Treatment of Primary Osteoarthritis of the Hip," *Journal of Bone and Joint Surgery*, 66-A: 228–241, 1984.

## VI. Effective Date

FDA proposes that any final rule that may issue based on this proposal become effective 90 days after its date of publication in the **Federal Register**.

## VII. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect upon the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

## VIII. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 610–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive order and so is not subject to review under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. FDA does not expect to receive any PMAs or notices of completion of

PDPs if this rule becomes final. The device has fallen out of use and is less safe and less effective than other available hip joint prostheses. The agency certifies that the proposed rule will not have a significant impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required. Additionally, this proposed rule will not impose costs of \$100 million or more on the private sector, State, local, and tribal governments in the aggregate. As a result, a summary statement or analysis under section 202(a) of the Unfunded Mandates Reform Act of 1995 is not required.

## IX. Paperwork Reduction Act of 1995

This proposed rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The burden hours required for § 888.3410(c), included in the collection entitled "Pre-market Approval of Medical Devices" (66 FR 42664, August 14, 2001), are reported and approved under OMB control number 0910–0231.

## X. Comments

You may submit written or electronic comments regarding this proposal or requests for a change in classification of the device to the Division of Dockets Management (see **ADDRESSES**). Submit a single copy of electronic information or two paper copies of any mailed information, except that individuals may submit one paper copy. Comments or requests are to be identified with the docket number found in brackets in the heading of this document. Received comments or requests may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

## List of Subjects in 21 CFR Part 888

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 888 be amended as follows:

## PART 888—ORTHOPEDIC DEVICES

1. The authority citation for 21 CFR part 888 continues to read as follows:

**Authority:** 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

2. Section 888.3410 is revised to read as follows:

**§ 888.3410 Hip joint metal/polymer or ceramic/polymer semiconstrained resurfacing cemented prosthesis.**

(a) *Identification.* A hip joint metal/polymer or ceramic/polymer semiconstrained resurfacing cemented prosthesis is a two-part device intended to be implanted to replace the articulating surfaces of the hip while preserving the femoral head and neck. The device limits translation and rotation in one or more planes via the geometry of its articulating surfaces. It has no linkage across the joint. This generic type of device includes prostheses that consist of a femoral cap component made of a metal alloy, such as cobalt-chromium-molybdenum, or a ceramic material, that is placed over a surgically prepared femoral head, and an acetabular resurfacing polymer component. Both components are

intended for use with bone cement (§ 888.3027).

(b) *Classification.* Class III.

(c) *Date PMA or notice of completion of a PDP is required.* A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before [date 90 days after date of publication of the final rule in the **Federal Register**], for any hip joint metal/polymer or ceramic/polymer semiconstrained resurfacing cemented prosthesis that was in commercial distribution before May 28, 1976, or that has, on or before [date 90 days after date of publication of the final rule in the **Federal Register**], been found to be substantially equivalent to a hip joint metal/polymer or ceramic/polymer semiconstrained resurfacing cemented prosthesis that was in commercial distribution before May 28, 1976, or that

has, on or before [date 90 days after date of publication of the final rule in the **Federal Register**], been found to be substantially equivalent to a hip joint metal/polymer or ceramic/polymer semiconstrained resurfacing cemented prosthesis that was in commercial distribution before May 28, 1976. Any other hip joint metal/polymer or ceramic/polymer semiconstrained resurfacing cemented prosthesis must have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

Dated: February 13, 2004.

**Beverly Chernaik Rothstein,**

*Acting Deputy Director for Policy and Regulations, Center for Devices and Radiological Health.*

[FR Doc. 04-4885 Filed 3-4-04; 8:45 am]

**BILLING CODE 4160-01-S**

# Notices

Federal Register

Vol. 69, No. 44

Friday, March 5, 2004

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### **Manti-La Sal National Forest, Muddy Creek Coal Area, Sanpete and Sevier Counties, UT; Notice of Intent To Prepare an Environmental Impact Statement**

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare an Environmental Impact Statement.

**SUMMARY:** The Forest Service (FS) will prepare an Environmental Impact Statement (EIS) to disclose the environmental and human effects of coal mining within the Muddy Creek Area, and to identify terms and conditions needed to protect non-mineral resources consistent with the Manti-La Sal National Forest Land and Resource Management Plan (Forest Plan). The Office of Surface Mining Reclamation and Enforcement (OSM) and the Bureau of Land Management (BLM) will participate as cooperating agencies.

The coal estate in a portion of the Muddy Creek area was conveyed to the State of Utah School and Institutional Trust Lands Administration (SITLA), creating an outstanding mineral right on those lands. This conveyance may be temporary; ownership of the coal estate will revert to the Federal government if a specified quantity of coal is produced. As owner of an outstanding mineral right, the State of Utah has sole authority to lease the coal estate. Under the Utah Coal Rules and the Memorandum of Understanding (MOU) between SITLA, the United States Department of Agriculture, and the United States Department of the Interior, dated January 5, 1999, the Forest may provide terms and conditions that must be incorporated into the mining permit approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA) prior

to mine development. Under the terms of the MOU, in providing conditions of concurrence with the mining permit the FS will abide by the standards and guidelines contained in the Forest Plan in effect on May 8, 1998 (the date on which the Utah Schools and Land Exchange Act of 1998 was ratified). Further, this MOU provides that subject to reasonable terms and conditions for the protection of the surface estate consistent with the Forest Plan, any permit requirements may not prohibit reasonable economic development of the conveyed coal estates.

The Muddy Creek Area is located approximately 10 miles northwest of Emery, Utah, immediately north of the SUFCO Mine permit area. The area to be analyzed in this EIS encompasses approximately 8,646 acres of coal lands on the Manti-La Sal National Forest in T. 20 S., R. 4 E., T. 20 S., R. 5 E., and T. 21 S., R. 5 E., SLM, in Sanpete and Sevier Counties, Utah. Included within the area is approximately 2,560 acres of coal lands that were transferred to SITLA, as part of the Utah Schools and Land Exchange Act of 1998.

The FS and cooperating agencies will conduct the environmental analysis considering the most likely mining scenarios and reasonably foreseeable alternatives. As required by the MOU and the Mineral Leasing Act, the FS will identify terms and conditions for the protection of non-mineral resources. This would allow identification of the measures required for minimizing effects to non-mineral resources consistent with the Forest Plan and provide a basis for a reasonable estimate of the tract's recoverable coal reserves. The proposed action is to identify terms and conditions necessary for the protection of non-mineral resources, consent to any Federal coal tract delineated within the Muddy Creek Area, issue surface occupancy authorizations as necessary, and to consent to any subsequent mining and reclamation plan(s).

The EIS process for this project will include preparation of a reasonably foreseeable mining scenario for the tract that will be used as the basis for determining effects. The most likely access to the coal reserves would be through the existing SUFCO Mine. Mining would be entirely underground, using predominantly longwall methods. Surface disturbance will most likely be

limited to several exploration drill holes over the life of the mine with a total area not to exceed 20 acres. The disturbed areas would be reclaimed when no longer needed. Subsidence similar to that experienced over other areas mined with underground methods on the southern Wasatch Plateau is expected.

The Forest Service has determined that the Muddy Creek Area is available for further consideration for coal mining under the Land and Resource Management Plan (Forest Plan) Final EIS and Record of Decision (ROD) for the Manti-La Sal National Forest, 1986.

The Forest Service is seeking information and comments from Federal, State, and local agencies as well as individuals and organizations who may be interested in, or affected by, the proposed action. The agency invites written comments and suggestions on the issues related to the proposed action and the area being analyzed.

Information received will be used to prepare the Draft and Final EIS and to make the agency decision. For most effective use, comments should be submitted to the Forest Service within 30 days from the date of publication of this notice in the **Federal Register**.

**Agency Decisions:** A. Identify terms and conditions needed to protect non-mineral resources.

B. Issue permits to authorize surface occupancy associated with the SITLA coal estate.

C. Consent to any Federal Coal Lease Tract delineated within the Muddy Creek Area.

D. Provide terms and conditions to be incorporated into any mining permit(s) issued by the State Division of Oil, Gas and Mining.

**DATES:** Written comments concerning issues to be considered and the scope of the analysis described in this notice should be received on or before April 12, 2004.

**ADDRESSES:** Send written comments to Forest Supervisor, Manti-La Sal National Forest, 599 West Price River Drive, Price, Utah 84501, ATTN: Dale Harber, Team Leader.

**FOR FURTHER INFORMATION CONTACT:** Questions concerning the proposed action and EIS should be addressed to Dale Harber or Aaron Howe, Manti-La Sal National Forest, phone (435) 637-2817.

**SUPPLEMENTARY INFORMATION:** The EIS and Record of Decision (ROD) will tier

to the Final EIS and ROD for the Manti-La Sal National Forest Land and Resource Management Plan (Forest Plan). The Forest Plan provides the overall guidance (goals, objections, standards, and management area direction) to achieve the desired future condition for the area being analyzed, and contains specific management area prescriptions for the entire forest.

Issues and alternatives to be evaluated in the analysis will be determined through scoping. The primary issues are expected to include the socioeconomic benefits of mining, the potential impacts of underground mining and mining-induced subsidence and seismicity to surface and ground water, vegetation, wildlife, cultural resources, range improvements, recreation, man-made features, and other land uses.

Agency representatives and other interested people are invited to visit with Forest Service at any time during the EIS process. Two specific time periods are identified for the receipt of formal comments on the analysis. The two comment periods are, (1) during the scoping process, the next 30 days following publication of this notice in the **Federal Register** and (2) during the foreman review period of the Draft EIS.

The Draft EIS is estimated to be filed with the Environmental Protection Agency (EPA) and available for public review in August, 2004. At that time the EPA will publish an availability notice in the **Federal Register**. The comment period on the Draft EIS will be 45 days from the date that EPA's notice of availability appears in the **Federal Register**. The Final EIS is expected to be released in January, 2005.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft Environmental Impact Statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 533 (1978). Also, environmental objections that could be raised at the draft Environmental Impact Statement stage but that are not raised until after completion of the final Environmental Impact Statement may be waived or dismissed by the courts. *City of Angoon v. Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-

day comment period so that substantive comments objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final Environmental Impact Statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft Environmental Impact Statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

**Authority:** National Forest Management Act of October 22, 1976 (Pub. L. 94-588, 90 Stat. 2949, as amended, 16 U.S.C. 472a, 476, 500, 513-516, 518, 521b, 528(note), 576b, 594-2(note), 1600(note), 1601(note), 1600-1602, 1604, 1606, 1608-1614), and Mineral Leasing Act of February 25, 1920 (Pub. L. 66-146, 41 Stat. 437, as amended; 30 U.S.C. 181-287).

Dated: March 1, 2004.

**Alice B. Carlton,**

*Forest Supervisor, Manti-La Sal National Forest.*

[FR Doc. 04-4981 Filed 3-4-04; 8:45 am]

**BILLING CODE 3410-11-M**

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### Eastern Washington Cascades Provincial Advisory Committee and the Yakima Provincial Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Eastern Washington Cascades Provincial Advisory Committee and the Yakima Provincial Advisory Committee will meet on Wednesday, March 17, 2004, at the Okanogan and Wenatchee National Forests Headquarters Office, 215 Melody Lane, Wenatchee, Washington. The meeting will begin at 9 a.m. and continue until 3 p.m. During this meeting we will share information on new developments relating to the Northwest Forest Plan, review the Adaptive Management Area subcommittee resolution on Cle Elum mining, and discuss bark beetle damage to forests in Okanogan County. All Eastern Washington Cascades and

Yakima Province Advisory Committee meetings are open to the public. Interested citizens are welcome to attend.

#### FOR FURTHER INFORMATION CONTACT:

Direct questions regarding this meeting to Paul Hart, Designated Federal Official, USDA, Wenatchee National Forest, 215 Melody Lane, Wenatchee, Washington 98801, 509-664-9200.

Dated: February 27, 2004.

**Paul Hart,**

*Designated Federal Official, Okanogan and Wenatchee National Forests.*

[FR Doc. 04-4897 Filed 3-4-04; 8:45 am]

**BILLING CODE 3410-11-M**

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### Klamath Provincial Advisory Committee (PAC)

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Klamath Provincial Advisory Committee will meet on March 17-18 at the Shasta-Trinity National Forest Supervisor's Office, 3644 Avtech Parkway, Redding, CA 96002. The meeting will start at 1 p.m. and adjourn at 5 p.m. on March 17, and start at 8 a.m. and adjourn at 12 noon on March 18. Agenda items for the meeting include: (1) Discussion on topics of general interest to the PAC (selection of new member, issue development process); (2) Salvage Harvest After Wildfire Recommendations; (3) Salvage Sale Opportunities; and (4) Public Comment Periods. All Provincial Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend.

**FOR FURTHER INFORMATION CONTACT:** Jan Ford, USDA, Klamath National Forest, 1312 Fairlane Road, Yreka, California 96097; telephone 530-841-4483 (voice), TDD 530-841-4573.

Dated: February 27, 2004.

**Margaret J. Boland,**

*Designated Federal Official, Klamath PAC.*

[FR Doc. 04-5056 Filed 3-4-04; 8:45 am]

**BILLING CODE 3410-11-M**

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### Notice of Lincoln County Resource Advisory Committee Meeting

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of change in meeting date.

**SUMMARY:** Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92-463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106-393) the Kootenai National Forests' Lincoln County Resource Advisory Committee meeting date has been changed to March 10, 2004 at 6 p.m. in Libby, Montana for the business meeting. Meetings are open to the public.

**DATES:** March 10, 2004 (changed from March 3).

**ADDRESSES:** This meeting will be held at the Forest Supervisor's Office, 1101 US Highway 2 West, Libby, Montana.

**FOR FURTHER INFORMATION CONTACT:** Barbara Edgmon, Committee Coordinator, Kootenai National Forest at (406) 293-6211, or e-mail [bedgmon@fs.fed.us](mailto:bedgmon@fs.fed.us).

**SUPPLEMENTARY INFORMATION:** Agenda topics include discussions on Forest Service recreation projects that may need funding, RAC logo and receiving public comment. If the meeting date or location is changed, notice will be posted in the local newspapers, including the Daily Interlake based in Kalispell, MT.

Dated: February 24, 2004.

**Bob Castaneda,**  
Forest Supervisor.

[FR Doc. 04-4658 Filed 3-4-04; 8:45 am]

BILLING CODE 3410-11-M

## DEPARTMENT OF AGRICULTURE

### Natural Resources Conservation Service

#### Barataria Basin Landbridge Shoreline Protection Project Phase 4 (BA-27d) Jefferson Parish, LA

**AGENCY:** Natural Resources Conservation Service.

**ACTION:** Notice of Finding of No Significant Impact.

**SUMMARY:** Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Natural Resources Conservation Service Guidelines (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an Environmental Impact Statement is not being prepared for the Barataria Basin Landbridge Shoreline Protection

Project Phase 4 (BA-27d), Jefferson Parish, Louisiana.

**FOR FURTHER INFORMATION CONTACT:** Donald W. Gohmert, State Conservationist, Natural Resources Conservation Service, 3737 Government Street, Alexandria, Louisiana 71302; telephone (318) 473-7751.

**SUPPLEMENTARY INFORMATION:** The environmental assessment of the federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Donald W. Gohmert, State Conservationist, has determined that preparation and review of an Environmental Impact Statement is not needed for this project.

The project will protect critically eroding portions of the east bank Bayou Rigolettes by constructing about 28,000 feet of shoreline protection (rock revetment).

The notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data collected during the environmental assessment are on file and may be reviewed by contacting Donald W. Gohmert.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

**Donald W. Gohmert,**  
State Conservationist.

[FR Doc. 04-4899 Filed 3-4-04; 8:45 am]

BILLING CODE 3410-16-P

#### COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

##### Procurement List; Proposed Additions and Deletions

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Proposed additions to and deletions from Procurement List.

**SUMMARY:** The Committee is proposing to add to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete products previously furnished by such agencies.

**COMMENTS MUST BE RECEIVED ON OR BEFORE:** April 4, 2004.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202-3259.

**FOR FURTHER INFORMATION CONTACT:** Sheryl D. Kennerly, (703) 603-7740.

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

##### Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice for each product or service will be required to procure the products and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

##### Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the products and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

##### End of Certification

The following products and services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

##### Products:

*Product/NSN:* Trousers, Desert Camouflage (Type VII).  
Additional 200,000 Units in any combination:  
8415-01-327-5324  
8415-01-327-5325  
8415-01-327-5326,  
8415-01-327-5327

8415-01-327-5328  
 8415-01-327-5329  
 8415-01-327-5330  
 8415-01-327-5331  
 8415-01-327-5332  
 8415-01-327-5333  
 8415-01-327-5334  
 8415-01-327-5335  
 8415-01-327-5336  
 8415-01-327-5337  
 8415-01-327-5338  
 8415-01-327-5339  
 8415-01-327-5340  
 8415-01-327-5341  
 8415-01-327-5342  
 8415-01-327-5343  
 8415-01-327-5344  
 8415-01-498-7929  
 8415-01-498-7924  
 8415-01-498-7926

*Product/NSN:* Trousers, Woodland Camouflage (Type I).  
 Additional 200,000 Units in any combination:

8415-01-084-1016  
 8415-01-084-1017  
 8415-01-084-1705  
 8415-01-084-1706  
 8415-01-084-1707  
 8415-01-084-1708  
 8415-01-084-1709  
 8415-01-084-1710  
 8415-01-084-1711  
 8415-01-084-1712  
 8415-01-084-1713  
 8415-01-084-1714  
 8415-01-084-1715  
 8415-01-084-1716  
 8415-01-084-1717  
 8415-01-084-1718  
 8415-01-134-3193  
 8415-01-134-3194  
 8415-01-134-3195  
 8415-01-134-3196  
 8415-01-134-3197  
 8415-01-413-6202  
 8415-01-413-6207  
 8415-01-413-6210

*Product/NSN:* Trousers, Woodland Camouflage (Type VI).  
 Additional 200,000 Units in any combination:

8415-01-390-8554  
 8415-01-390-8556  
 8415-01-390-8939  
 8415-01-390-8940  
 8415-01-390-8941  
 8415-01-390-8942  
 8415-01-390-8943  
 8415-01-390-8944  
 8415-01-390-8945  
 8415-01-390-8946  
 8415-01-390-8947  
 8415-01-390-8948  
 8415-01-390-8949  
 8415-01-390-8950  
 8415-01-390-8951  
 8415-01-390-8952  
 8415-01-390-8953

8415-01-390-8954  
 8415-01-391-1061  
 8415-01-391-1062  
 8415-01-391-1063  
 8415-01-400-3676  
 8415-01-400-3677  
 8415-01-400-3678

*NPA:* Goodwill Industries of South Florida, Inc., Miami, Florida  
*Contract Activity:* Defense Supply Center Philadelphia, Philadelphia, Pennsylvania

#### Services

*Service Type/Location:* Janitorial/Custodial, Social Security District Office, 3231 Martin Luther King Blvd., Dallas, Texas.

*NPA:* The Arc of Caddo-Bossier, Shreveport, Louisiana.

*Contract Activity:* GSA, Public Buildings Service, Central Area, Dallas, Texas.

#### Deletions

##### *Regulatory Flexibility Act Certification*

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action may result in additional reporting, recordkeeping or other compliance requirements for small entities.
2. If approved, the action may result in authorizing small entities to furnish the products to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the products proposed for deletion from the Procurement List.

##### *End of Certification*

The following products are proposed for deletion from the Procurement List:

#### Products

*Product/NSN:* Cap, Food Handler's.

8415-00-234-7677  
 8415-00-234-7678  
 8415-00-234-7679

*NPA:* BESB Industries, West Hartford, Connecticut.

*NPA:* Virginia Industries for the Blind, Charlottesville, Virginia.

*Contract Activity:* Defense Supply Center Philadelphia, Philadelphia, Pennsylvania.

*Product/NSN:* Slide Fastener Unit, Laced Boot.

8430-00-465-1888  
 8430-00-465-1889  
 8430-00-465-1890.

*NPA:* Lighthouse for the Blind of the Palm Beaches, Inc., West Palm Beach, Florida.

*Contract Activity:* Defense Supply Center Philadelphia, Philadelphia, Pennsylvania.

*Product/NSN:* Streamer, Warning, Aircraft.

8345-00-863-9170

*NPA:* BESB Industries, West Hartford, Connecticut.

*Contract Activity:* Defense Supply Center Philadelphia, Philadelphia, Pennsylvania.

**Sheryl D. Kennerly,**

*Director, Information Management.*

[FR Doc. 04-4984 Filed 3-4-04; 8:45 am]

**BILLING CODE 6353-01-P**

## COMMISSION ON CIVIL RIGHTS

### Agenda and Notice of Public Meeting of the Colorado Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning meeting with briefing of the Colorado State Advisory Committee will convene at 3:30 p.m. (m.d.t.) and adjourn at 4:30 p.m. (m.d.t.) and, the briefing will convene at 5 p.m. (m.d.t.) and adjourn at 7:30 p.m. (m.d.t.), Friday, March 26, 2004, at The Doubletree Hotel, 501 Camino Del Rio, Durango, CO 81301. The purpose of the meetings is to plan future projects and to discuss current civil rights issues in the state.

Persons desiring additional information, or planning a presentation to the Committee, should contact John Dulles, Director of the Rocky Mountain Regional Office, (303) 866-1040 (TDD 303-866-1049). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated in Washington, DC, February 18, 2004.

**Dawn Sweet,**

*Editor.*

[FR Doc. 04-4957 Filed 3-4-04; 8:45 am]

**BILLING CODE 6335-01-P**

## COMMISSION ON CIVIL RIGHTS

### Agenda and Notice of Public Meeting of the Maine Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on

Civil Rights, that a conference call of the Maine Advisory Committee will convene at 11 a.m. and adjourn at 12 p.m., Wednesday, March 10, 2004. The purpose of the conference call is to conduct final planning steps for a community forum on post-9/11 civil rights in Maine.

This conference call is available to the public through the following call-in number: 1-800-473-6926, access code: 22181601. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the supplied call-in number or made over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1-800-977-8339 and providing the Service with the conference call number and access code number.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Aonghas St-Hilaire of the Eastern Regional Office, 202-376-7533 (TDD 202-376-8116), by 4 p.m. on Tuesday, March 9, 2004.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated in Washington, DC, February 24, 2004.

Dawn Sweet,  
Editor.

[FR Doc. 04-4958 Filed 3-4-04; 8:45 am]

BILLING CODE 6335-01-P

## DEPARTMENT OF COMMERCE

### International Trade Administration

(A-570-846)

#### Brake Rotors From the People's Republic of China: Preliminary Results and Partial Rescission of the Sixth Administrative Review and Preliminary Results and Final Partial Rescission of the Ninth New Shipper Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of preliminary results and partial rescission of the sixth administrative review and preliminary results and final partial rescission of the ninth new shipper review.

**SUMMARY:** SUMMARY: The Department of Commerce ("the Department") is

currently conducting the sixth administrative review and ninth new shipper review of the antidumping duty order on brake rotors from the People's Republic of China ("PRC") covering the period April 1, 2002, through March 31, 2003. The administrative review examines 20 exporters, five of which are exporters included in five exporter/producer combinations. The new shipper review covers two exporters.<sup>1</sup>

We have preliminarily determined that no sales have been made below normal value ("NV") with respect to the exporters who participated fully in these reviews. If these preliminary results are adopted in our final results of these reviews, we will instruct Customs and Border Protection ("CBP") to assess antidumping duties on entries of subject merchandise during the period of review ("POR") for which the importer-specific assessment rates are above *de minimis*.

Interested parties are invited to comment on these preliminary results. We will issue the final results no later than 120 days from the date of publication of this notice.

**EFFECTIVE DATE:** March 5, 2004.

#### FOR FURTHER INFORMATION CONTACT:

Brian Smith, Terre Keaton and Margarita Panayi Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482-1766, (202) 482-1280 and (202) 482-0049, respectively.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Department received timely requests from Laizhou City Luqi Machinery Co., Ltd ("Luqi") on April 29, 2003, and from Qingdao Rotec Auto Parts Co., Ltd. ("Rotec") and Anda Industries Co., Ltd. ("Anda") on April 30, 2003, for new shipper reviews of this antidumping duty order in accordance with 19 CFR 351.214(c).

On April 30, 2003, the petitioner<sup>2</sup> requested an administrative review pursuant to 19 CFR 351.213(b) for 20 exporters,<sup>3</sup> five of which are included in

five exporter/producer combinations<sup>4</sup> that received zero rates in the less-than-fair-value ("LTFV") investigation and thus were excluded from the antidumping duty order only with respect to brake rotors sold through the specified exporter/producer combinations.

On May 16, 2003, Luqi, Rotec and Anda agreed to waive the time limits applicable to the new shipper review and to permit the Department to conduct the new shipper review concurrently with the administrative review.

On May 21, 2003, the Department initiated an administrative review covering the companies listed in the petitioner's April 30, 2003, request (*see Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 68 FR 27781 (May 21, 2003)).

On May 30, 2003, the Department initiated a new shipper review of Anda, Luqi and Rotec (*see Brake Rotors from the People's Republic of China: Initiation of the Ninth New Shipper Antidumping Duty Review*, 68 FR 33675 (June 5, 2003)).

On June 5, 2003, the Department issued a questionnaire to each company listed in the above-referenced initiation notices.

On June 17, 2003, the Department provided the parties an opportunity to submit publicly available information for consideration in these preliminary results. Also on June 17, 2003, Anda timely withdrew its request for a new shipper review. Accordingly, we rescinded the new shipper review with respect to Anda on July 8, 2003 (*see Brake Rotors from the People's Republic of China: Notice of Partial Rescission of*

Hongfa Machinery (Dalian) Co., Ltd. ("Hongfa"); (6) Qingdao Gren (Group) Co. ("GREN"); (7) Qingdao Meita Automotive Industry Company, Ltd. ("Meita"); (8) Shandong Huanri (Group) General Company ("Huanri General"); (9) Yantai Winhere Auto-Part Manufacturing Co., Ltd. ("Winhere"); (10) Zibo Luzhou Automobile Parts Co., Ltd. ("ZLAP"); (11) Longkou TLC Machinery Co., Ltd. ("LKTLC"); (12) Zibo Golden Harvest Machinery Limited Company ("Golden Harvest"); (13) Shanxi Fengkun Metallurgical Limited Company ("Shanxi Fengkun"); (14) Xianghe Xumingyuan Auto Parts Co. ("Xumingyuan"); (15) Xiangfen Hengtai Brake System Co., Ltd. ("Hengtai"); (16) China National Machinery and Equipment Import & Export (Xianjiang) Corporation ("Xianjiang"); (17) China National Automotive Industry Import & Export Corporation ("CAIEC"); (18) Laizhou CAPCO Machinery Co., Ltd. ("Laizhou CAPCO"); (19) Laizhou Luyuan Automobile Fittings Co. ("Laizhou Luyuan"); and (20) Shenyang Honbase Machinery Co., Ltd. ("Shenyang").

<sup>4</sup> The excluded exporter/producer combinations are: (1) Xianjiang/Zibo Botai Manufacturing Co., Ltd.; (2) CAIEC/Laizhou CAPCO; (3) Laizhou CAPCO/Laizhou CAPCO; (4) Laizhou Luyuan Luyuan or Shenyang; or (5) Shenyang/Laizhou Luyuan or Shenyang.

<sup>1</sup> The new shipper review originally covered three exporters but the Department rescinded the review with respect to one of these exporters on July 8, 2003, based upon its timely withdrawal from the review.

<sup>2</sup> The petitioner is the Coalition for the Preservation of American Brake Drum and Rotor Aftermarket Manufacturers.

<sup>3</sup> The names of these exporters are as follows: (1) China National Industrial Machinery Import & Export Corporation ("CNIM"); (2) Laizhou Automobile Brake Equipment Company, Ltd. ("LABEC"); (3) Longkou Haimeng Machinery Co., Ltd. ("Longkou Haimeng"); (4) Laizhou Hongda Auto Replacement Parts Co., Ltd. ("Hongda"); (5)



the Ninth New Shipper Antidumping Duty Review, 68 FR 41555 (July 14, 2003)), and sent appropriate instructions to CBP on July 31, 2003, terminating the bonding option on shipments of subject merchandise exported and produced by Anda and requiring a cash deposit on such shipments at the PRC-wide rate.

In July 2003, each of the exporters that received a zero rate in the LTFV investigation stated that during the POR, it did not make U.S. sales of brake rotors produced by companies other than those included in its respective excluded exporter/producer combination. Also in July 2003, we received responses to the Department's questionnaires from the remaining companies. Of these companies, Shanxi Fengkun, Hengtai, Golden Harvest and Xumingyuan each stated that it had no sales or shipments of subject merchandise to the United States during the POR.

On August 8, 2003, the petitioner submitted comments to the respondents' questionnaire responses. On August 15, 2003, the Department issued a supplemental questionnaire to each company which submitted a questionnaire response.

On August 25, 2003, the Department conducted a data query on brake rotor entries made during the POR from all exporters named in the excluded exporter/producer combinations and from the four exporters named above (i.e., Shanxi Fengkun, Hengtai, Golden Harvest and Xumingyuan) in order to substantiate their claims that they made no shipments of subject merchandise during the POR. As a result of the data query, the Department requested that CBP confirm the actual manufacturer for 11 specific entries associated with the excluded exporter/producer combinations (see the September 29, 2003, memorandum from Irene Darzenta Tzafolias, Program Manager, to Michael S. Craig of the CBP ("September 29, 2003, memorandum")). Also on August 25, 2003, the petitioner and respondents submitted publicly available information.

In August and September 2003, the companies submitted their responses to the Department's supplemental questionnaires. In September 2003, the petitioner submitted comments on the supplemental questionnaire responses of several companies. On October 2, 2003, the Department issued a second supplemental questionnaire to 10 companies, and these companies submitted their second supplemental responses in October and November 2003. The petitioner submitted comments on the second supplemental

responses in October 2003. The Department issued GREN and Meita a third supplemental questionnaire in October 2003, to which responses were submitted in November 2003.

On October 8, 2003, the Department extended the time limit for completion of the preliminary results until February 2, 2004 (see *Brake Rotors from the People's Republic of China: Notice of Extension of Time Limit for Preliminary Results in Antidumping Duty Administrative and New Shipper Reviews*, 68 FR 59583 (October 16, 2003)).

On October 27, 2003, we notified Longkou Haimeng, LABEC, Luqi and Rotec of our intent to conduct verification of their responses to the antidumping duty questionnaire, and provided each respondent with a verification outline for purposes of familiarizing it with the verification process. The petitioner submitted comments on these verification outlines in October and November 2003.

On October 31, 2003, LABEC submitted corrections to its U.S. sales listing and factors of production listing. On November 3, 2003, Huanri General, Meita, Hongfa, Longkou Haimeng each submitted corrections to its factors of production listing. On November 6, 2003, the petitioner filed an objection to Huanri General's, Meita's and Hongfa's November 3, 2003, submissions.

On November 12, 2003, Rotec notified the Department that it was no longer able to participate in the new shipper review and subsequently withdrew its new shipper review request. From November 5 to November 21, 2003, the Department conducted verification of the information submitted by Longkou Haimeng, Luqi and LABEC in accordance with 19 CFR 351.307. On November 10, 14 and 21, 2003, respectively, these companies submitted the minor corrections to their responses that they presented to the Department verifiers at the start of verification. On November 17 and 25, 2003, the petitioner filed comments on the minor corrections submitted by Longkou Haimeng and LABEC, respectively, at verification. On December 10, 2003, we returned the revised U.S. sales listing submitted by LABEC on November 21, 2003, because we neither requested nor accepted this revised listing at verification. On December 15, 2003, LABEC resubmitted its minor corrections with the U.S. sales listing omitted. (See the Department's memo re: Issues Related to Preliminary Results, dated March 1, 2004.)

On December 12, 2003, the petitioner submitted comments on the Department's September 29, 2003,

memorandum. On December 19, 2003, the Department issued a memorandum to the file in response to the petitioner's December 12, 2003, submission.<sup>5</sup>

On December 17 and 22, 2003, we issued verification reports for Longkou Haimeng, LABEC and Luqi. (See December 17 and 22, 2003, verification reports for Longkou Haimeng and LABEC, respectively, in the Sixth Antidumping Duty Administrative Review, and December 22, 2003, verification report for Luqi in the Ninth Antidumping Duty New Shipper Review.)

On December 22, 2003, the Department issued a memorandum to the file notifying parties of our intent to issue a final rescission decision with respect to Rotec in the context of these preliminary results and invited interested parties to comment on our intent to rescind the new shipper review with respect to Rotec (see December 22, 2003, memorandum to the file). No comments were filed.

On January 14, 2004, the petitioner submitted comments on the verification reports of Longkou Haimeng, LABEC and Luqi.

On January 30, 2004, the Department extended the time limit for completion of the preliminary results until March 3, 2004 (see *Brake Rotors from the People's Republic of China: Notice of Extension of Time Limit for Preliminary Results in Antidumping Duty Administrative and New Shipper Reviews*, 69 FR 6253 (February 10, 2004)).

On February 3, 2004, we requested additional clarification of LKTL's responses. LKTL submitted its response on February 13, 2004.

#### Scope of the Order

The products covered by this order are brake rotors made of gray cast iron, whether finished, semifinished, or unfinished, ranging in diameter from 8 to 16 inches (20.32 to 40.64 centimeters) and in weight from 8 to 45 pounds (3.63 to 20.41 kilograms). The size parameters (weight and dimension) of the brake rotors limit their use to the following types of motor vehicles: automobiles, all-terrain vehicles, vans and recreational vehicles under "one ton and a half," and light trucks designated as "one ton and a half."

Finished brake rotors are those that are ready for sale and installation without any further operations. Semi-finished rotors are those on which the

<sup>5</sup> Also in the December 19, 2003, memorandum to the file, we informed the petitioner that we would consider for the preliminary results any comments submitted on the verification reports if such comments were submitted by January 20, 2004 (see December 19, 2003, memorandum to the file).

surface is not entirely smooth, and have undergone some drilling. Unfinished rotors are those which have undergone some grinding or turning.

These brake rotors are for motor vehicles, and do not contain in the casting a logo of an original equipment manufacturer ("OEM") which produces vehicles sold in the United States. (E.G., General Motors, Ford, Chrysler, Honda, Toyota, Volvo). Brake rotors covered in this order are not certified by OEM producers of vehicles sold in the United States. The scope also includes composite brake rotors that are made of gray cast iron, which contain a steel plate, but otherwise meet the above criteria. Excluded from the scope of this order are brake rotors made of gray cast iron, whether finished, semifinished, or unfinished, with a diameter less than 8 inches or greater than 16 inches (less than 20.32 centimeters or greater than 40.64 centimeters) and a weight less than 8 pounds or greater than 45 pounds (less than 3.63 kilograms or greater than 20.41 kilograms).

Brake rotors are currently classifiable under subheading 8708.39.5010 of the *Harmonized Tariff Schedule of the United States* ("HTSUS"). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

#### Period of Review

The POR covers April 1, 2002, through March 31, 2003.

#### Verification

As provided in section 782(i) of the Act, we verified information provided by Longkou Haimeng, LABEC and Luqi. We used standard verification procedures, including on-site inspection of their facilities and examination of relevant sales and financial records. Our verification results are outlined in the verification report for each company (see December 17, 2003, verification report for Longkou Haimeng and December 22, 2003, verification reports for LABEC and Luqi for further discussion).

#### Preliminary Partial Rescission of Administrative Review

Pursuant to 19 CFR 351.213(d)(3), we have preliminarily determined that the exporters which are part of the five exporter/producer combinations which received zero rates in the LTFV investigation and the four exporters that made no shipment claims did not make shipments of subject merchandise to the United States during the POR. Specifically, (1) Xinjiang did not export brake rotors to the United States that

were manufactured by producers other than Zibo Botai; (2) CAIEC did not export brake rotors to the United States that were manufactured by producers other than Laizhou CAPCO; (3) Laizhou CAPCO did not export brake rotors to the United States that were manufactured by producers other than Laizhou CAPCO; (4) Laizhou Luyuan did not export brake rotors to the United States that were manufactured by producers other than Shenyang or Laizhou Luyuan; (5) Shenyang did not export brake rotors to the United States that were manufactured by producers other than Laizhou Luyuan or Shenyang; and (6) Shanxi Fengkun, Hengtai, Golden Harvest or Xumingyuan made no shipments of subject merchandise to the United States during the POR.

In order to make this determination, we first examined PRC brake rotor shipment data maintained by CBP. We then selected certain entries associated with the exporter/producer combinations identified above and requested CBP to provide documentation which would enable the Department to determine who manufactured the brake rotors included in those entries. Based on the information obtained from CBP, we found no instances where the exporters included in the five exporter-producer combinations shipped brake rotors from the PRC to the U.S. market outside of their excluded export/producer combinations during the POR. (See March 1, 2004, memorandum to the file, Results of Request for Assistance from Customs and Border Protection to Further Examine U.S. Entries Made by Exporter/Producer Combinations - Preliminary Results.) With respect to Shanxi Fengkun, Hengtai, Golden Harvest and Xumingyuan, the results of the CBP data query indicated that there were no shipments of subject merchandise made by these companies during the POR (see March 1, 2004, memorandum to the file, Review of Customs and Border Protection Data on Brake Rotor Entries from Zibo Golden Harvest Machinery Limited Company, Shanxi Fengkun Metallurgical Limited Company, Xianghe Xumingyuan Auto Parts Co., and Xiangfen Hengtai Brake System Co., Ltd.).

Therefore, based on the results of our query, in accordance with 19 CFR 351.213(d)(3), we are preliminarily rescinding the administrative review with respect to all of the above-mentioned companies because we found no evidence that these companies made shipments of the subject merchandise during the POR.

#### Final Partial Rescission of New Shipper Review

The Department's regulations at 19 CFR 351.214(f)(1) provide that the Department may rescind a new shipper review "... if a party that requested a review withdraws its request no later than 60 days after the date of publication of notice of initiation of the requested review." Rotec withdrew its request for new shipper review on November 12, 2003. Although Rotec's withdrawal is more than 60 days from the date of initiation, consistent with the Department's past practice in the context of administrative reviews conducted under section 751(a) of the Act, the Department has discretion to extend the time period for withdrawal on a case-by-case basis. (See e.g. *Iron Construction Castings from Canada: Notice of Rescission of Antidumping Duty Administrative Review*, 63 FR 45797 (August 27, 1998).) In this case, the Department has determined to grant the request to rescind this new shipper review with respect to Rotec because rescission of this review would not prejudice any party in this proceeding, as Rotec would continue to be included in the PRC-wide rate to which it was subject at the time of its request for a new shipper review. (See *Silicon Metal from the People's Republic of China: Notice of Rescission of New Shipper Review*, 64 FR 40831 (July 28, 1999).)

#### Separate Rates

In proceedings involving non-market-economy ("NME") countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty deposit rate (i.e., a PRC-wide rate).

Of the 12 respondents participating in these reviews, three of the PRC companies (i.e., Hongfa, Meita and Winhere) are wholly foreign-owned. Thus, for these three companies, because we have no evidence indicating that they are under the control of the PRC government, a separate rates analysis is not necessary to determine whether they are independent from government control (see *Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate from the People's Republic of China*, 64 FR 71104, 71105 (December 20, 1999); *Preliminary Results of First New Shipper Review and First Antidumping Duty Administrative Review: Certain Preserved Mushrooms from the People's Republic of China*, 65 FR 66703, 66705 (November 7, 2000); and *Notice of Final Determination of Sales at Less Than*

*Fair Value: Bicycles From the People's Republic of China*, 61 FR 19026 (April 30, 1996) ("Bicycles").

The remaining nine respondents (*i.e.*, Longkou Haimeng, CNIM, LABEC, LKTLC, Luqi, GREN, Hongda, Huanri General and ZLAP) are either joint ventures between PRC and foreign companies, collectively-owned enterprises and/or limited liability companies in the PRC. Thus, for these nine respondents, a separate rates analysis is necessary to determine whether the exporters are independent from government control over export activities (*see Bicycles*, at 61 FR 56570). To establish whether a firm is sufficiently independent in its export activities from government control to be entitled to a separate rate, the Department utilizes a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) ("Sparklers"), and amplified in the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) ("Silicon Carbide"). Under the separate-rates criteria, the Department assigns separate rates in NME cases only if the respondent can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

#### 1. *De Jure Control*

Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes: 1) an absence of restrictive stipulations associated with the individual exporter's business and export licenses; 2) any legislative enactments decentralizing control of companies; and 3) any other formal measures by the government decentralizing control of companies.

Longkou Haimeng, CNIM, LABEC, LKTLC, Luqi, GREN, Hongda, Huanri General and ZLAP have each placed on the administrative record documents to demonstrate absence of *de jure* control (*e.g.*, the "Regulations of the PRC for Controlling the Registration of Enterprises as Legal Persons," promulgated on June 3, 1988; the 1990 "The Regulations Governing the Rural Collective Owned Enterprises of the PRC;" and the 1994 "Foreign Trade Law of the People's Republic of China").

As in prior cases, we have analyzed these laws and have found them to establish sufficiently an absence of *de jure* control of joint ventures between the PRC and foreign companies, collectively-owned enterprises and limited liability companies in the PRC.

*See, e.g., Final Determination of Sales at Less than Fair Value: Furfuryl Alcohol from the People's Republic of China*, 60 FR 22544 (May 8, 1995) ("Furfuryl Alcohol"), and *Preliminary Determination of Sales at Less Than Fair Value: Certain Partial-Extension Steel Drawer Slides with Rollers from the People's Republic of China*, 60 FR 29571 (June 5, 1995). We have no new information in this proceeding which would cause us to reconsider this determination with regard to Longkou Haimeng, CNIM, LABEC, LKTLC, Luqi, GREN, Hongda, Huanri General or ZLAP.

#### 2. *De Facto Control*

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. *See Silicon Carbide and Furfuryl Alcohol*. Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether the respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

The Department typically considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) whether the export prices are set by, or subject to the approval of, a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses (*see Silicon Carbide and Furfuryl Alcohol*).

Longkou Haimeng, CNIM, LABEC, LKTLC, Luqi, GREN, Hongda, Huanri General and ZLAP have each asserted the following: (1) it establishes its own export prices; (2) it negotiates contracts without guidance from any governmental entities or organizations; (3) it makes its own personnel decisions; and (4) it retains the proceeds of its export sales, uses profits according to its business needs, and has the authority to sell its assets and to obtain loans. Additionally, each of these companies' questionnaire responses indicates that its pricing during the POR does not suggest coordination among exporters.

In this segment of the proceeding, the Department selected four respondents for verification, namely Longkou Haimeng, LABEC, Luqi and Rotec.<sup>6</sup> The Department did not select the other nine respondents (*i.e.*, CNIM, LKTLC, GREN, Hongda, Huanri General, Winhere, Hongfa, Meita and ZLAP) for verification.

For Longkou Haimeng, LABEC and Luqi, the Department found no evidence at verification of government involvement in their business operations. Specifically, Department officials examined sales documents that showed that each of these respondents negotiated its contracts and set its own sales prices with its customers. In addition, the Department reviewed sales documentation, bank statements and accounting documentation that demonstrated that each of these respondents received payment from its U.S. customers via bank wire transfer, which was deposited into its own bank account without government intervention. Finally, the Department examined internal company memoranda such as appointment notices, which demonstrated that each of these companies selected its own management. *See* pages 7 and 8 of the Department's verification report for Longkou Haimeng, pages 6 and 7 of the Department's verification report for LABEC and pages 4 through 7 of the Department's verification report for Luqi. This information, taken in its entirety, supports a finding that there is a *de facto* absence of governmental control of each of these companies' export functions.

With regard to CNIM, LKTLC, GREN, Hongda, Huanri General and ZLAP (*i.e.*, the other six respondents subject to the separate rates test in this review), the Department elected not to verify these companies' responses in accordance with section 351.307(b)(3) of the Department's regulations. Based on documentation contained in each company's responses, the Department also finds that each of these six respondents: (1) negotiated its own contracts; (2) set its own sales prices with its customers; (3) retained its profits and, where applicable, arranged its own financing; and (4) selected its own management (*see* each respondent's section A questionnaire responses submitted in July 2003).

Consequently, we have determined that Longkou Haimeng, CNIM, LABEC, LKTLC, Luqi, GREN, Hongda, Huanri

<sup>6</sup>Prior to its scheduled verification, Rotec notified the Department that it would no longer be participating in the new shipper review and subsequently withdrew its new shipper review request. Therefore, Rotec was not verified.

General and ZLAP have each met the criteria for the application of separate rates either through documentation submitted on the record subject to verification or through actual verification. See *Notice of Final Determination at Less Than Fair Value: Persulfates from the People's Republic of China*, 62 FR 27222 (May 19, 1997).

#### Normal Value Comparisons

To determine whether sales of the subject merchandise by CNIM, GREN, Longkou Haimeng, Huanri General, Hongda, Hongfa, LABEC, Meita, Winhere, LKTLC, Luqi and ZLAP to the United States were made at prices below normal value ("NV"), we compared each company's export prices ("EPs") to NV, as described in the "Export Price," "Constructed Export Price," and "Normal Value" sections of this notice, below.

#### Export Price

For each respondent, we used EP methodology in accordance with section 772(a) of the Act for sales in which the subject merchandise was first sold prior to importation by the exporter outside the United States directly to an unaffiliated purchaser in the United States, and constructed export price ("CEP") was not otherwise indicated.

##### 1. Hongfa, Luqi, LKTLC, Meita, Winhere and ZLAP

We calculated EP based on packed, FOB foreign port prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for foreign inland freight and foreign brokerage and handling charges in the PRC in accordance with section 772(c) of the Act. Because foreign inland freight and foreign brokerage and handling fees were provided by PRC service providers or paid for in renminbi, we based those charges on surrogate rates from India (see "Surrogate Country" section below for further discussion of our surrogate-country selection). To value foreign inland trucking charges, we used truck freight rates published in *Indian Chemical Weekly* and distance information obtained from the following websites: <http://www.infreight.com>, <http://www.sitaindia.com/Packages/CityDistance.php>, <http://www.abcindia.com>, <http://www.eindiatourism.com>, and <http://www.mapsofindia.com>. To value foreign brokerage and handling expenses, we relied on 10/99-9/00 information reported in the public U.S. sales listing submitted by Essar Steel Ltd. in the antidumping investigation of

*Certain Hot-Rolled Carbon Steel Flat Products from India: Final Determination of Sales at Less Than Fair Value*, 67 FR 50406 (October 3, 2001).

##### 2. CNIM, GREN, Longkou Haimeng, Hongda, Huanri General and LABEC

We calculated EP based on packed, CIF, CFR, C&F or FOB foreign port prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for foreign inland freight, foreign brokerage and handling charges in the PRC, marine insurance, U.S. import duties and fees (including harbor maintenance fees, merchandise processing fees, and brokerage and handling) and international freight, in accordance with section 772(c) of the Act. As all foreign inland freight and foreign brokerage and handling fees were provided by PRC service providers or paid for in renminbi, we valued these services using the Indian surrogate values discussed above. For all six respondents (except Longkou Haimeng<sup>7</sup>), we valued marine insurance based on a publicly available price quote from a marine insurance provider obtained from <http://www.rjgconsultants.com/insurance.html>, as used in the antidumping duty investigation of *Certain Malleable Iron Pipe Fittings from the People's Republic of China: Final Results of Antidumping Duty Investigation*, 68 FR 61395 (October 28, 2003). For international freight (i.e., ocean freight and U.S. inland freight expenses from the U.S. port to the warehouse (where applicable)), we used the reported expenses because each of these six respondents used market-economy freight carriers and paid for those expenses in a market-economy currency (see, e.g., *Brake Rotors from the People's Republic of China: Final Results of Antidumping Duty New Shipper Review*, 64 FR 9972, 9974 (March 1, 1999)).

For U.S. import duties incurred on GREN's sales, we revised the reported expenses because the per-unit amounts reported in GREN's U.S. sales database did not comport with the corresponding calculation worksheets in exhibit 17 of its July 21, 2003, response. To recalculate the U.S. import duties, we multiplied the U.S. duty percentage applicable to brake rotors (inclusive of harbor maintenance and merchandise processing fees) against the gross unit

<sup>7</sup> At Longkou Haimeng's verification, we found that its reported international freight cost is inclusive of marine insurance (see page 14 of the Department's verification report for Longkou Haimeng).

price (net of movement expenses as appropriate).

Based on our verification findings, we made the following revisions to the U.S. sales data reported by LABEC: (1) we included one sale not previously reported and excluded two sales incorrectly reported; (2) we adjusted the gross unit price for one model number/sale; (3) we adjusted the international freight expense for certain sales; and (4) we excluded sales determined to be made to third-country markets. (See pages 4, 5, 9, 11 and 12 of LABEC's verification report and the Department's memo re: Issues Related to Preliminary Results, dated March 1, 2004.)

#### Constructed Export Price

For GREN, we also calculated CEP in accordance with section 772(b) of the Act. We found that some of GREN's sales during the POR were CEP sales because the sales were made for the account of GREN by its subsidiary in the United States to unaffiliated purchasers. We based CEP on packed, delivered or ex-warehouse prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight and foreign brokerage and handling charges in the PRC, international freight (i.e., ocean freight and U.S. inland freight from the U.S. port to the warehouse), marine insurance, U.S. import duties, and U.S. inland freight expenses (i.e., freight from the plant to the customer). As all foreign inland freight, foreign brokerage and handling, and marine insurance expenses were provided by PRC service providers or paid for in renminbi, we valued these services using the Indian surrogate values discussed above. For international freight (where applicable), we used the reported expense because the respondent used a market-economy freight carrier and paid for those expenses in a market-economy currency.

As mentioned above, we revised the U.S. import duties calculation. In addition, we revised the U.S. inland freight expense applicable to those sales with "delivered" sales terms (i.e., freight from the warehouse to the customer) because the data in the U.S. sales database did not reflect the data reported in the corresponding calculation worksheet in exhibit 16 of the July 21, 2003, response. For the remaining sales in the U.S. sales database with "pick-up" sales terms,

we set this expense to zero as it was not applicable.

In accordance with section 772(d)(1) of the Act, we also deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (commissions and credit expenses), and indirect selling expenses (including inventory carrying costs) incurred in the United States. We also made an adjustment for profit in accordance with section 772(d)(3) of the Act.

## Normal Value

### A. Non-Market-Economy Status

In every case conducted by the Department involving the PRC, the PRC has been treated as an NME country. Pursuant to section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority (*see Notice of Preliminary Results of Antidumping Duty Administrative Review and Preliminary Partial Rescission of Antidumping Duty Administrative Review: Freshwater Crawfish Tail Meat From the People's Republic of China*, 66 FR 52100, 52103 (October 12, 2001)). None of the parties to this proceeding has contested such treatment. Accordingly, we calculated NV in accordance with section 773(c) of the Act, which applies to NME countries.

### B. Surrogate Country

Section 773(c)(4) of the Act requires the Department to value an NME producer's factors of production, to the extent possible, in one or more market-economy countries that (1) are at a level of economic development comparable to that of the NME country, and (2) are significant producers of comparable merchandise. India was among the countries comparable to the PRC in terms of overall economic development (*see Memorandum from the Office of Policy to Irene Darzenta Tzafolias*, dated June 16, 2003). In addition, based on publicly available information placed on the record (*e.g.*, Indian producer financial statements), India is a significant producer of the subject merchandise. Accordingly, we considered India the surrogate country for purposes of valuing the factors of production because it meets the Department's criteria for surrogate-country selection.

### C. Factors of Production

In accordance with section 773(c) of the Act, we calculated NV based on the factors of production which included,

but were not limited to: (A) hours of labor required; (B) quantities of raw materials employed; (C) amounts of energy and other utilities consumed; and (D) representative capital costs, including depreciation. We used the factors reported by each of the 12 respondents, which produced the brake rotors it exported to the United States during the POR. To calculate NV, we multiplied the reported unit factor quantities by publicly available Indian values.

Based on our verification findings at Longkou Haimeng, we revised the following data in its response: (1) the reported weights for plastic bags and plastic sheets; and (2) the reported method of delivery of firewood to Longkou Haimeng's facility (*see pages 4, 18 and 20 of Longkou Haimeng's verification report*).

Based on our verification findings at LABEC, we revised the reported per-unit weight for plastic bags for all models (*see pages 4, 17 and 18 of LABEC's verification report*). In addition, on October 31, 2003, LABEC revised its U.S. sales listing to include two invoices that were inadvertently omitted. One of these invoices related to a brake rotor model, the factors of production of which were not reported in LABEC's factors of production database. As a result, the Department applied the formulas in exhibit 14 of the July 16, 2003, response and exhibit 3 of the October 21, 2003, response to derive the model-specific consumption factors, with the exception of packing materials factors. For packing materials, we used the packing material consumption factors for the only brake rotor model with the same diameter, width and weight as the model excluded from the factors of production database.

Based on our verification findings at Luqi, we revised the following data in its response: (1) the reported per-unit weight for plastic sheet reported for five models; and (2) the reported per-unit consumption amounts for limestone for all models (*see pages 3, 11, 12, 13 and 15 of Luqi's verification report*).

The Department's selection of the surrogate values applied in this determination was based on the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. We added to Indian surrogate values surrogate freight costs using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corporation*

*v. United States*, 117 F. 3d 1401, 1407–08 (Fed. Cir. 1997). For those values not contemporaneous with the POR and quoted in a foreign currency, we adjusted for inflation using wholesale price indices published in the *International Monetary Fund's International Financial Statistics*. (*See Preliminary Results Valuation Memorandum*, dated March 1, 2004, for a detailed explanation of the methodology used to calculate surrogate values.)

To value pig iron, steel scrap, ferrosilicon, ferromanganese, limestone, lug nuts, ball bearing cups, lubrication oil, coking coal, and firewood, we used April 2002–March 2003 average import values downloaded from the *World Trade Atlas Trade Information System (Internet Version 4.3e) (WTA)*. We relied on the factor specification data submitted by the respondents for the above-mentioned inputs in their questionnaire and supplemental questionnaire responses, as verified by the Department, where applicable, for purposes of selecting surrogate values from WTA. Certain respondents (*i.e.*, Luqi, Longkou Haimeng, Huanri General, LABEC, CNIM, LKTL and ZLAP) stated in their responses that they did not incur an expense for ball bearing cups and lug nuts because their U.S. customer provided these items to them free of charge. In support of their claim that they incurred no expense for these items, each of these respondents provided customer correspondence. We also examined inventory and accounting records relevant to these items during the verification of the questionnaire responses of Longkou Haimeng, LABEC and Luqi. Therefore, for the preliminary results, we have not valued these items for those respondents. (*See the Department's memo re: Issues Related to Preliminary Results*, dated March 1, 2004.)

We also added an amount for loading and additional transportation charges associated with delivering coal to the factory based on June 1999 Indian price data contained in the periodical *Business Line*.

We based our surrogate value for electricity on 2001 data from the International Energy Agency's ("IEA") report, "Electricity Prices for Industry," contained in the *2002 Key World Energy Statistics from the IEA*.

We valued labor based on a regression-based wage rate, in accordance with 19 CFR 351.408(c)(3).

To value selling, general, and administrative ("SG&A") expenses, factory overhead and profit, we used the 2000–2001 financial data of Kalyani Brakes Limited ("Kalyani") and Rico

Auto Industries Limited ("Rico"), and the 2001–2002 financial data of Mando Brake Systems India Limited ("Mando"). Where appropriate, we removed from the surrogate overhead and SG&A calculations the excise duty amount listed in the financial reports.

To value corrugated paper cartons, nails, plastic bags, plastic sheets/covers, paper sheet, steel strip and straps/buckles, tape and pallet wood, we used April 2002–March 2003 average import values from WTA. Because there was no Indian import data available for tin clamps/buckles during the period April 2002–March 2003, we used April 2001–March 2002 import values from WTA to value this input, and we adjusted the average value calculated for inflation. All respondents (with the exception of LKTLC) included the weight of the straps/buckles in their reported steel strip weights since the material of both inputs was the same. Therefore, we valued these factors using the combined weight reported by the respondents.

All inputs were shipped by truck. Therefore, to value PRC inland freight, we used freight rates published in *Indian Chemical Weekly* and distance information obtained from the following websites: <http://www.infreight.com>, <http://www.sitaindia.com/Packages/CityDistance.php>, <http://www.abcindia.com>, <http://eindiatourism.com>, and <http://www.mapsofindia.com>.

#### Preliminary Results of the Review

We preliminarily determine that the following margins exist during the period April 1, 2002, through March 31, 2003:

Manufacturer/producer/exporter	Margin percent
China National Industrial Machinery Import & Export Corporation .....	0.09 (de minimis)
Hongfa Machinery (Dalian) Co., Ltd. ....	0.00
Laizhou Automobile Brake Equipment Company, Ltd. ....	0.18 (de minimis)
Laizhou City Luqi Machinery Co., Ltd. ....	0.00
Laizhou Hongda Auto Replacement Parts Co., Ltd. ....	0.00
Longkou Haimeng Machinery Co., Ltd. ....	0.00
Longkou TLC Machinery Co., Ltd. ....	0.00
Qingdao Gren (Group) Co. ....	0.03 (de minimis)
Qingdao Meita Automotive Industry Company, Ltd. ....	0.11 (de minimis)
Shandong Huanri (Group) General Company .....	0.00

Manufacturer/producer/exporter	Margin percent
Yantai Winhere Auto-Part Manufacturing Co., Ltd. ....	0.01 (de minimis)
Zibo Luzhou Automobile Parts Co., Ltd. ....	0.00

We will disclose the calculations used in our analysis to parties to this proceeding within five days of the date of publication of this notice. Any interested party may request a hearing within 30 days of publication of this notice. Any hearing, if requested, will be held on May 24, 2004.

Interested parties who wish to request a hearing or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, Room B–099, within 30 days of the date of publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. See 19 CFR 351.310(c).

Issues raised in the hearing will be limited to those raised in case briefs and rebuttal briefs. Case briefs from interested parties may be submitted no later than May 10, 2004. Rebuttal briefs, limited to issues raised in the case briefs, will be due no later than May 17, 2004. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue; and (2) a brief summary of the argument. Parties are also encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited.

The Department will issue the final results of these reviews, including the results of its analysis of issues raised in any such written briefs or at the hearing, if held, not later than 120 days after the date of issuance of these preliminary results.

#### Assessment Rates

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate appraisal instructions for the companies subject to this review directly to CBP within 15 days of publication of the final results of this review. Pursuant to 19 CFR 351.212(b)(1), we will calculate importer- or customer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales. Where the respondent did not report actual entered

value, we will calculate individual importer- or customer-specific assessment rates by aggregating the dumping margins calculated for all of the U.S. sales examined and dividing that amount by the total quantity of the sales examined. To determine whether the per-unit duty assessment rates are *de minimis* (i.e., less than 0.50 percent), in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we have calculated importer- or customer-specific *ad valorem* ratios based on export prices. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer or customer-specific assessment rate calculated in the final results of this review is above *de minimis*.

#### Cash Deposit Requirements

Upon completion of these reviews, for entries from CNIM, Hongfa, LABEC, Luqi, Hongda, Longkou Haimeng, LKTLC, GREN, Meita, Huanri General, Winhere and ZLAP, we will require cash deposits at the rate established in the final results as further described below.

Bonding will no longer be permitted to fulfill security requirements for shipments of brake rotors from the PRC produced and exported by Luqi that are entered, or withdrawn from warehouse, for consumption on or after the publication date of the final result of the new shipper review. The following cash deposit requirements will be effective upon publication of the final results of the new shipper review for all shipments of subject merchandise from Luqi entered, or withdrawn from warehouse, for consumption on or after the publication date: (1) for subject merchandise manufactured and exported by Luqi, no cash deposit will be required if the cash deposit rate calculated in the final results is zero or *de minimis*; and (2) for subject merchandise exported by Luqi but not manufactured by Luqi, the cash deposit rate will continue to be the PRC countrywide rate (i.e., 43.32 percent).

The following deposit requirements will be effective upon publication of the final results of the administrative review for all shipments of brake rotors from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) the cash deposit rates for CNIM, Hongfa, LABEC, Hongda, Longkou Haimeng, LKTLC, GREN, Meita, Huanri General, Winhere, and ZLAP will be the rates determined in the final results of review (except that if a rate is *de minimis*, i.e., less than 0.50 percent, no cash deposit will be

required); (2) the cash deposit rate for PRC exporters who received a separate rate in a prior segment of the proceeding will continue to be the rate assigned in that segment of the proceeding; (3) the cash deposit rate for the PRC NME entity (e.g., which includes Rotec) will continue to be 43.32 percent; and (4) the cash deposit rate for non-PRC exporters of subject merchandise from the PRC will be the rate applicable to the PRC exporter that supplied that exporter.

With respect to Rotec, bonding will no longer be permitted to fulfill security requirements for shipments of brake rotors from the PRC produced and exported by Rotec that are entered, or withdrawn from warehouse, for consumption in the United States on or after the publication of this partial final rescission determination in the **Federal Register**.

These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

#### Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These administrative and new shipper reviews and notice are in accordance with sections 751(a)(1) of the Act and 19 CFR 351.214.

Dated: March 1, 2004.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

[FR Doc. 04-5005 Filed 3-4-04; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-533-809]

#### Certain Forged Stainless Steel Flanges From India; Final Results of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Final Results of Antidumping Duty Administrative Review.

**SUMMARY:** On November 10, 2003, the Department of Commerce (the Department) published in the **Federal Register** the preliminary results and partial rescission of its administrative review of the antidumping duty order on certain forged stainless steel flanges (flanges) from India (68 FR 63758). The review covers flanges manufactured by Chandan Steel Ltd. (Chandan), Isibars Ltd. (Isibars), and Viraj Forgings Ltd. (Viraj). The period of review (POR) is February 1, 2002 through January 31, 2003. We gave interested parties an opportunity to comment on the preliminary results. We received no comments. We have made no changes from the preliminary results for the final results. Therefore, the final results do not differ from the preliminary results. The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled "Final Results of Review."

**EFFECTIVE DATE:** March 5, 2004.

**FOR FURTHER INFORMATION CONTACT:** Thomas Killiam or Robert James, AD/CVD Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230, telephone: (202) 482-5222 or (202) 482-0649, respectively.

#### SUPPLEMENTARY INFORMATION:

##### Background

We published the preliminary results on November 10, 2003 (68 FR 63758), and received no comments. In the same notice, we rescinded the review with respect to Shree Ganesh Forgings Ltd.

##### Scope of Review

The products under review are certain forged stainless steel flanges from India, both finished and not finished, generally manufactured to specification ASTM A-182, and made in alloys such as 304, 304L, 316, and 316L. The scope includes five general types of flanges. They are weld neck, used for butt-weld line connection; threaded, used for threaded line connections; slip-on and lap joint, used with stub-ends/butt-weld line connections; socket weld, used to fit pipe into a machined recession; and blind, used to seal off a line. The sizes of the flanges within the scope range generally from one to six inches; however, all sizes of the above-described merchandise are included in the scope. Specifically excluded from the scope of this order are cast stainless steel flanges. Cast stainless steel flanges

generally are manufactured to specification ASTM A-351. The flanges subject to this order are currently classifiable under subheadings 7307.21.1000 and 7307.21.5000 of the HTSUS. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under review is dispositive of whether or not the merchandise is covered by the review.

#### Final Results of the Review

We made no changes from the preliminary results. For the reasons stated in our preliminary results, we determine that the following percentage weighted-average margins exists for the period February 1, 2002, through January 31, 2003:

#### CERTAIN FORGED STAINLESS STEEL FLANGES FROM INDIA

Producer/manufacturer/ exporter	Weighted-average margin (percent)
Chandan .....	0
Isibars .....	0
Viraj .....	0.04 (de minimis)

The Department will determine, and Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. We have calculated importer-specific duty assessment rates for the merchandise in question by aggregating the dumping margins calculated for all U.S. sales to each importer and dividing this amount by the total quantity of those sales. To determine whether the duty assessment rates were *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer-specific *ad valorem* ratios based on export prices. We will direct CBP to assess the resulting assessment rates uniformly on all entries of that particular customer made during the period of review. Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis*. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of these final results of review.

The following deposit requirements will be effective upon publication of this notice for all shipments of stainless steel flanges from India entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) For the companies reviewed, including Viraj,



which has a *de minimis* rate, the cash deposit rates will be zero, (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a previous segment of this proceeding, the cash deposit rate will continue to be the company-specific rate published in the most recent final results in which that manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review or in any previous segment of this proceeding, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in these final results of review or in the most recent segment of the proceeding in which that manufacturer participated; and (4) if neither the exporter nor the manufacturer is a firm covered in this review or in any previous segment of this proceeding, the cash deposit rate will be 162.14 percent, the all others rate established in the less-than-fair-value investigation. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred, and in the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.214.

Dated: February 25, 2004.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

[FR Doc. 04-5004 Filed 3-4-04; 8:45 am]

BILLING CODE 3510-DS-S

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-851]

#### **Certain Preserved Mushrooms From the People's Republic of China: Preliminary Results of Sixth New Shipper Review and Preliminary Results and Partial Rescission of Fourth Antidumping Duty Administrative Review**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of preliminary results of sixth new shipper review and preliminary results and partial rescission of fourth antidumping duty administrative review.

**SUMMARY:** The Department of Commerce ("the Department") is concurrently conducting the sixth new shipper review and fourth administrative review of the antidumping duty order on certain preserved mushrooms from the People's Republic of China ("PRC") covering the period February 1, 2002, through January 31, 2003. The new shipper review covers one exporter. We have preliminarily determined that this exporter has made sales at less than normal value and that its reported sale appears to be a *bona fide* sale. The administrative review covers six exporters. We have preliminarily determined that sales have been made below normal value with respect to one of these exporters. If these preliminary results are adopted in our final results of these reviews, we will instruct Customs and Border Protection ("CBP") to assess antidumping duties on entries of subject merchandise during the period of review ("POR"), for which the importer-specific assessment rates are above *de minimis*.

Interested parties are invited to comment on these preliminary results. We will issue the final results no later than 120 days from the date of publication of this notice.

**EFFECTIVE DATE:** March 5, 2004.

**FOR FURTHER INFORMATION CONTACT:** Brian Smith or Jim Mathews, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-1766, or (202) 482-2778, respectively.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

On February 19, 1999, the Department published in the **Federal Register** an

amended final determination and antidumping duty order on certain preserved mushrooms from the PRC (64 FR 8308).

On February 3, 2003, the Department published a notice advising of the opportunity to request an administrative review of the antidumping duty order on certain preserved mushrooms from the PRC (68 FR 5272). On February 25 and 28, 2003, the Department received timely requests from Gerber Food (Yunnan) Co., Ltd., ("Gerber"), Green Fresh Foods (Zhangzhou) Co., Ltd. ("Green Fresh"), Guangxi Yulin Oriental Food Co., Ltd. ("Guangxi Yulin"), Shantou Hongda Industrial General Corporation, ("Shantou Hongda"), and Shenxian Dongxing Foods Co., Ltd. ("Shenxian Dongxing") for an administrative review pursuant to 19 CFR 351.213(b).

On February 28, 2003, the Department received timely requests from Primera Harvest (Xiangfan) Co., Ltd. ("Primera Harvest") and Xiamen International Trade & Industrial Co., Ltd. ("XITIC") for a new shipper review in accordance with 19 CFR 351.214(c).

On February 28, 2003, the petitioner<sup>1</sup> requested an administrative review pursuant to 19 CFR 351.213(b) of 11 companies<sup>2</sup> which it claimed were producers and/or exporters of the subject merchandise. Five of these 11 companies also requested a review.

On March 12, 2003, Primera Harvest and XITIC both agreed to waive the time limits applicable to the new shipper review and to permit the Department to conduct the new shipper review concurrently with the administrative review.

On March 20, 2002, the Department initiated an administrative review covering the companies listed in the petitioner's February 28, 2003, request. (*See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 68 FR 14394, 14399 (March 25, 2003)).

<sup>1</sup> The petitioner is the Coalition for Fair Preserved Mushroom Trade which includes the American Mushroom Institute and the following domestic companies: L.K. Bowman, Inc., Modern Mushroom Farms, Inc., Monterey Mushrooms, Inc., Mount Laurel Canning Corp., Mushrooms Canning Company, Southwood Farms, Sunny Dell Foods, Inc., and United Canning Corp.

<sup>2</sup> The petitioner's request included the following companies: (1) China Processed Food Import & Export Company ("COFCO"); (2) Gerber; (3) Green Fresh; (4) Guangxi Yulin; (5) Raoping Xingyu Foods Co., Ltd. ("Raoping Xingyu"); (6) Shantou Hongda; (7) Shenxian Dongxing; (8) Shenzhen Qunxingyuan Trading Co., Ltd. ("Shenzhen Qunxingyuan"); (9) Xiamen Zhongjia Imp. & Exp. Co., Ltd. ("Zhongjia"); (10) Zhangzhou Jingxiang Foods Co., Ltd. ("Zhangzhou Jingxiang"); and (11) Zhangzhou Longhai Minhui Industry and Trade Co., Ltd. ("Minhui").



On March 29, 2002, the Department initiated a new shipper review of Primera Harvest and XITIC. (*See Certain Preserved Mushrooms from the People's Republic of China: Initiation of New Shipper Antidumping Duty Review*, 68 FR 15152 (March 28, 2003)).

On April 1, 2003, we issued a questionnaire to each PRC company listed in the above-referenced initiation notices.

On May 1, 2003, the Department provided the parties an opportunity to submit publicly available information ("PAI") for consideration in these preliminary results.

On May 7, 2003, the respondents Raoping Xingyu and Shenzhen Qunxingyuan each indicated that neither company had shipments of the subject merchandise to the United States during the POR.

On May 13, 2003, Minhui and Zhongjia each filed submissions with the Department certifying that neither company had any shipments of the subject merchandise to the United States during the POR other than the sale each reported in a prior new shipper review (the POR of which overlapped with the POR of this administrative review).

From May 12 through June 13, 2003, COFCO, Gerber, Green Fresh, Guangxi Yulin, Primera Harvest, Shantou Hongda, and Shenxian Dongxing submitted their responses to the Department's antidumping duty questionnaire.

As a result of not receiving its response to the antidumping duty questionnaire, the Department issued a letter to Zhangzhou Jingxiang on May 29, 2003, which provided this company with an additional two weeks of time to respond to the Department's questionnaire. We received no reply to this letter or response to the questionnaire from this company.

On June 12, 2003, the petitioner requested an extension until July 10, 2003, to withdraw any request for review of companies listed in its February 28, 2003, communication, which the Department granted on June 16, 2003.

From June 25 through July 18, 2003, the petitioner submitted comments on the questionnaire responses provided by COFCO, Gerber, Green Fresh, Guangxi Yulin, Primera Harvest, Shantou Hongda, and Shenxian Dongxing.

On July 10, 2003, the petitioner requested an extension of time until August 18, 2003, to submit factual information in this case, which the Department granted on July 22, 2003.

From July 28 through August 15, 2003, the Department issued COFCO,

Gerber, Green Fresh, Guangxi Yulin, Primera Harvest, Shantou Hongda, and Shenxian Dongxing a supplemental questionnaire.

On August 7, 2003, the Department issued a memorandum which notified the interested parties of its intent to rescind the new shipper review with respect to XITIC because it failed to provide proper certifications in accordance with 19 CFR 351.214(b)(ii)(B) based on data contained in its questionnaire response. We provided parties until August 21, 2003, to comment on the Department's intent to rescind the review with respect to XITIC. No parties submitted comments.

Also on August 7, 2003, the petitioner withdrew its request for an administrative review of Minhui and Zhongjia.

On August 15, 2003, the petitioner, COFCO, and Guangxi Yulin submitted PAI for use in valuing the factors of production. On September 2, 2003, COFCO and Guangxi Yulin submitted additional PAI.

On August 20, 2003, Minhui and Zhongjia requested that the Department conduct a review of their sales and factors of production data in the context of the administrative review and on September 15, 2003, they requested that the Department place their data on the record of the administrative review. On September 2, and 23, 2003, the petitioner objected to both above-noted requests made by Minhui and Zhongjia.

From August 28 through September 15, 2003, the respondents submitted their responses to the Department's supplemental questionnaire.

On September 24, 2003, Shantou Hongda indicated that it would not participate in verification.

On October 3, 2003, the Department published in the **Federal Register** a notice of postponement of the preliminary results until no later than March 1, 2004 (68 FR 57424).

On October 9, 2003, the Department rescinded the new shipper review with respect to XITIC. (*See Certain Preserved Mushrooms From the People's Republic of China: Notice of Partial Rescission of Sixth New Shipper Review*, 68 FR 59586 (October 16, 2003).)

From September through November 2003, the petitioner submitted additional comments on the questionnaire responses provided by COFCO, Gerber, Green Fresh, Guangxi Yulin, Primera Harvest, and Shenxian Dongxing.

In October 2003, the Department issued Primera Harvest and Shenxian Dongxing second supplemental questionnaires and also received these

companies' responses to those supplemental questionnaires. Also in October 2003, the Department issued verification outlines to Primera Harvest and Shenxian Dongxing.

The Department conducted verification of the responses of Primera Harvest and Shenxian Dongxing during the period October 28 through November 21, 2003. On December 12, 2003, the Department issued the verification report for Shenxian Dongxing. On January 30, 2004, the Department issued the verification report for Primera Harvest.

On November 3, 2003, the Department rescinded the administrative review with respect to Minhui and Zhongjia. (*See Certain Preserved Mushrooms From the People's Republic of China: Notice of Partial Rescission of Fourth New Shipper Review*, 68 FR 63065 (November 3, 2003).)

From October to December 2003, the Department issued COFCO two supplemental questionnaires and Gerber and Green Fresh a second supplemental questionnaire, and received responses from these companies during the period November 2003 to January 2004.

From December 10, 2003, to January 6, 2004, Department officials met with counsel for the petitioner and COFCO to discuss whether or not COFCO's affiliated preserved mushroom producers should also be required to report their factors of production (*see ex parte* memoranda to the file dated December 22, 2003, and January 7, 2004).

In January 2004, the Department issued COFCO a fourth supplemental questionnaire which addressed its affiliations with other companies that sold and/or produced preserved mushrooms during the POR and requested COFCO to provide factors of production data for those companies. In January and February 2004, COFCO submitted its responses.

In February 2004, the petitioner submitted pre-preliminary results comments on the data provided by all respondents in these reviews. (*See* company-specific calculation memoranda dated March 1, 2004, for further discussion.)

#### Scope of Order

The products covered by this order are certain preserved mushrooms whether imported whole, sliced, diced, or as stems and pieces. The preserved mushrooms covered under this order are the species *Agaricus bisporus* and *Agaricus bitorquis*. "Preserved mushrooms" refer to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes

slicing or cutting. These mushrooms are then packed and heated in containers including, but not limited to, cans or glass jars in a suitable liquid medium, including, but not limited to, water, brine, butter or butter sauce. Preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces. Included within the scope of this order are "brined" mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing.

Excluded from the scope of this order are the following: (1) All other species of mushroom, including straw mushrooms; (2) all fresh and chilled mushrooms, including "refrigerated" or "quick blanched mushrooms"; (3) dried mushrooms; (4) frozen mushrooms; and (5) "marinated," "acidified," or "pickled" mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives.<sup>3</sup>

The merchandise subject to this order is classifiable under subheadings: 2003.10.0127, 2003.10.0131, 2003.10.0137, 2003.10.0143, 2003.10.0147, 2003.10.0153 and 0711.51.0000 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

#### Period of Reviews

The POR is February 1, 2002, through January 31, 2003.

#### Verification

As provided in section 782(i)(2) of the Act, we verified information provided by Primera Harvest and Shenxian Dongxing. We used standard verification procedures, including on-site inspection of the manufacturers' and exporters' facilities, and examination of relevant sales and financial records. Our verification results are outlined in the verification report for each company. (For further discussion, see December 12, 2003, verification report for Shenxian Dongxing in the Fourth Antidumping Duty Administrative Review ("Shenxian Dongxing verification report"); and

January 30, 2004, verification report for Primera Harvest in the Sixth Antidumping Duty New Shipper Review ("Primera Harvest verification report").)

#### Partial Rescission of Administrative Review

We are preliminarily rescinding this review with respect to Zhangzhou Jingxiang because the shipment data we examined did not show U.S. entries of the subject merchandise during the POR from this company.

#### Bona Fide Sale Analysis—Primera Harvest

The petitioner contends that Primera Harvest is not a bona fide new shipper and therefore, the Department should rescind its new shipper review. Among other things, the petitioner claims that the respondent is affiliated with other companies which produced and exported preserved mushrooms from Chile and which are subject to an antidumping duty order. Moreover, the petitioner argues that through its past and present affiliations, Primera Harvest's overseer and part owner has been involved in selling practices in the past, and during the POR, which circumvented the antidumping duty orders on certain preserved mushrooms from both Chile and the PRC, a fact which alone calls into question the reliability of the data provided by Primera Harvest in this new shipper review. In addition, the petitioner claims that Primera Harvest's reported price for its sole U.S. sale during the POR was aberrationally high when compared to the average unit value of U.S. imports of comparable goods during the POR and during the month of the sale, and that the quantity of the sale was aberrationally low when compared to the average shipment size of comparable goods during the POR and during the month of the sale. Finally, the petitioner claims that Primera Harvest offers no plausible reason for why its U.S. customer would pay such a high price for a common commodity product, shipped by an unknown company that previously did not participate in the U.S. market, and with no special considerations that would justify the reported price level.

For the reasons stated below, we preliminarily find that Primera Harvest's reported U.S. sale during the POR appears to be a bona fide sale, as required by 19 CFR 351.214(b)(2)(iv)(C), based on the totality of the facts on the record. Specifically, we find that (1) the net price of its single reported sale (*i.e.*, gross unit price net of international freight and U.S. brokerage and handling,

and movement expenses) was similar to the average unit value of U.S. imports of comparable canned mushrooms from the PRC during the POR; (2) the price of the sale was within the range of prices of comparable goods imported from the PRC during the POR; and (3) the price charged by Primera Harvest to its U.S. customer was similar to the prices which Primera Harvest charged to the same U.S. customer during the POR for sales of mushrooms produced in the PRC by other manufacturers. We also find that the quantity of the sale was within the range of shipment sizes of comparable goods imported from the PRC during the POR. (See March 1, 2004, memorandum to the file for further discussion of our price and quantity analysis.)

Although the petitioner states that the person who oversees Primera Harvest's operations was involved in selling practices in the past which allegedly circumvented the antidumping duty order on certain preserved mushrooms from Chile, this allegation does not serve as a sufficient basis to call into question the reliability of data provided by Primera Harvest in this new shipper review for a different country (see data contained in attachment 1 of the petitioner's February 18, 2004, submission, and *Certain Preserved Mushrooms from Chile: Final Results of Administrative Review*, 67 FR 31769 (May 10, 2002) and accompanying decision memorandum at Comment 2). Furthermore, the petitioner's allegations as to other questionable sales involving this individual outside of this new shipper proceeding do not pertain to the bona fides of the transaction under review (see pages 27–28 of the Primera Harvest verification report). While the Department has scrutinized the circumstances of the transaction carefully, we have not identified information on the record that establishes that the transaction was not bona fide.

Moreover, although Primera Harvest had no other arm's-length sales of any merchandise, subject or non-subject, during or after the POR (up until the time of verification) and therefore, apparently, had no commercial income during this period, we do not find that this factor in and of itself, in light of all of the other information of record provided above, is sufficient for calling into question the bona fides of its reported U.S. sale. In addition, the Department verified that Primera Harvest was undergoing significant construction of production facilities for certain preserved mushrooms during the POR and afterward. This fact provides further evidence that this company was,

<sup>3</sup> On June 19, 2000, the Department affirmed that "marinated," "acidified," or "pickled" mushrooms containing less than 0.5 percent acetic acid are within the scope of the antidumping duty order. See "Recommendation Memorandum—Final Ruling of Request by Tak Fat, *et al.* for Exclusion of Certain Marinated, Acidified Mushrooms from the Scope of the Antidumping Duty Order on Certain Preserved Mushrooms from the People's Republic of China," dated June 19, 2000. This decision is currently on appeal.

and continues to be, legitimately engaged in the production and export of subject merchandise (see pages 23–24 of the Primera Harvest verification report). Therefore, for the reasons mentioned above, the Department preliminarily finds that Primera Harvest's sole U.S. sale during the POR was a *bona fide* commercial transaction.

#### Affiliation—COFCO

COFCO purchased preserved mushrooms from its producer, Fujian Yu Xing Fruit & Vegetable Foodstuff Development Co. ("Yu Xing"), which it then sold to the United States during the POR. COFCO is also linked through its parent company, China National Cereals, Oils, & Foodstuffs Import & Export Corporation ("China National"), to two other preserved mushroom producers, COFCO (Zhangzhou) Food Industrial Co., Ltd. ("COFCO Zhangzhou") and Fujian Zishan Group Co. ("Fujian Zishan"), from which it did not purchase subject merchandise during the POR. The petitioner maintains that the Department should collapse these entities for margin calculation purposes because a significant potential for manipulation of price or production between these entities otherwise exists.

Section 771(33)(E) of the Act provides that the Department will find parties to be affiliated if any person directly or indirectly owns, controls, or holds with power to vote, five percent or more of the outstanding voting stock or shares of any organization and such organization; section 771(33)(F) of the Act provides that parties are affiliated if two or more persons directly or indirectly control, or are controlled by, or under common control with any other person; and section 771(33)(G) of the Act provides that parties are affiliated if any person controls any other person. To the extent that section 771(33) of the Act does not conflict with the Department's application of separate rates and enforcement of the non-market economy ("NME") provision, section 773(c) of the Act, the Department will determine that exporters and/or producers are affiliated if the facts of the case support such a finding.

In this case, COFCO holds a significant ownership share in Yu Xing (see exhibit 2 of COFCO's November 10, 2003, submission). Moreover, COFCO and Yu Xing share a company official who is on the board of directors at both companies and whose responsibilities include (1) examining and executing the implementation of resolutions passed by the board members; (2) convening shareholder meetings; and (3) providing financial reports of each company's

business performance to each company's board of directors (see exhibit 4 of COFCO's September 9, 2003, submission; and pages 2–4 and exhibit 7 of COFCO's January 23, 2004, submission). Therefore, the Department has determined in this case that COFCO and Yu Xing are affiliated in accordance with sections 771(33)(E), (F), and (G) of the Act for the reasons stated above.

In addition, COFCO Zhangzhou (which also produced preserved mushrooms during the POR) appears to be affiliated with both COFCO and Yu Xing based on section 771(33) of the Act for the reasons stated below. Specifically, both COFCO and Yu Xing hold significant ownership shares in COFCO Zhangzhou (see also exhibit 2 of COFCO's November 10, 2003, submission). Moreover, COFCO Zhangzhou shares with COFCO and Yu Xing the same company official who is also on the board of directors at COFCO Zhangzhou and who also performs the same responsibilities at COFCO Zhangzhou which he performs at COFCO and Yu Xing as described above (see also pages 2–4 and exhibit 7 of COFCO's January 23, 2004, submission). COFCO Zhangzhou and Yu Xing also have the same general manager (see exhibit 5 of COFCO's January 23, 2004, submission). Therefore, the Department has determined in this case that COFCO, Yu Xing, and COFCO Zhangzhou are also affiliated in accordance with section 771(33)(E), (F), and (G) of the Act.

Furthermore, based on data contained in COFCO's questionnaire responses, COFCO, COFCO Zhangzhou, and Yu Xing are also affiliated, pursuant to section 771(33) of the Act, either directly or indirectly, with two other companies (*i.e.*, Xiamen Jiahua Import & Export Trading Co., Ltd. ("Xiamen Jiahua") and Fujian Zishan) which sold and/or produced preserved mushrooms for markets other than the U.S. market during the POR. Specifically, COFCO's parent company, China National, holds a significant ownership share in Xiamen Jiahua (see also exhibit 2 of COFCO's November 10, 2003, submission). Moreover, the same company official who is on the board of directors at COFCO, COFCO Zhangzhou, and Yu Xing is also on the board of directors at Xiamen Jiahua. In addition, this company official performs the same responsibilities at COFCO, COFCO Zhangzhou, and Yu Xing as described above, which he performs at Xiamen Jiahua (see also pages 2–4 and exhibit 7 of COFCO's January 23, 2004, submission).

With respect to Fujian Zishan (*i.e.*, another producer of preserved

mushrooms during the POR), we note that Xiamen Jiahua holds a significant ownership share in Fujian Zishan and that COFCO's parent company, China National, holds a significant ownership share in Xiamen Jiahua (see also exhibit 2 of COFCO's November 10, 2003, submission). Furthermore, we note that one of Fujian Zishan's board members also serves as the general manager at Xiamen Jiahua. In addition, we note that the same individual who certified the accuracy of COFCO's sales and factors of production data also certified to the accuracy of Fujian Zishan's factors of production. Accordingly, we find that COFCO, COFCO Zhangzhou, Yu Xing, Fujian Zishan, and Xiamen Jiahua are affiliated through the common control of COFCO's parent company pursuant to section 771(33)(F) of the Act. Furthermore, given that there are shared individuals in positions of control and/or influence between and among these companies as discussed above, we also find sufficient control exists between these entities to believe that Fujian Zishan is affiliated with COFCO, COFCO Zhangzhou, Yu Xing, and Xiamen Jiahua in accordance with section 771(33)(G) of the Act.

#### Collapsing—COFCO

Based on the ownership ties described above, the Department requested COFCO to (1) report the factors of production data from each company listed above if it produced preserved mushrooms during the POR; and (2) provide information on the relationship between and among these companies for purposes of determining whether the Department should collapse any or all of them in the preliminary results (see January 8, 2004, supplemental questionnaire for details).

Pursuant to 19 CFR 351.401(f), the Department will collapse producers and treat them as a single entity where (1) those producers are affiliated, (2) the producers have production facilities for producing similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities, and (3) there is a significant potential for manipulation of price or production. In determining whether a significant potential for manipulation exists, the regulations provide that the Department may consider various factors, including (1) the level of common ownership, (2) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm, and (3) whether the operations of the affiliated firms are intertwined. (See *Gray Portland Cement and Clinker From Mexico: Final Results*

of *Antidumping Duty Administrative Review*, 63 FR 12764, 12774 (March 16, 1998) and *Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails from Taiwan*, 62 FR 51427, 51436 (October 1, 1997).) To the extent that this provision does not conflict with the Department's application of separate rates and enforcement of the NME provision, section 773(c) of the Act, the Department will collapse two or more affiliated entities in a case involving an NME country if the facts of the case warrant such treatment. Furthermore, we note that the factors listed in 19 CFR 351.401(f)(2) are not exhaustive, and in the context of an NME investigation or administrative review, other factors unique to the relationship of business entities within the NME may lead the Department to determine that collapsing is either warranted or unwarranted, depending on the facts of the case. See *Hontex Enterprises, Inc. v. United States*, Slip Op. 03-17, 36 (February 13, 2003) (noting that the application of collapsing in the NME context may differ from the standard factors listed in the regulation).

In summary, depending upon the facts of each investigation or administrative review, if there is evidence of significant ownership ties or control between or among producers which produce similar and/or identical merchandise but may not all produce their product for sale to the United States, the Department may find such evidence sufficient to apply the collapsing criteria in an NME context in order to determine whether all or some of those affiliated producers should be treated as one entity (see *Certain Hot-Rolled Carbon Steel Flat Products from the People's Republic of China, Preliminary Determination of Sales at Less Than Fair Value* 66 FR 22183 (May 3, 2001)).

Based on data contained in its supplemental questionnaire responses, COFCO indicated that only COFCO Zhangzhou, Fujian Zishan, and Yu Xing produced preserved mushrooms during the POR. Therefore, we find that the first and second collapsing criteria are met here because these companies are affiliated as explained above and all have production facilities for producing similar or identical products that would not require substantial retooling in order to restructure manufacturing priorities (see factors of production data submitted by each company in COFCO's February 9, 2004, submission).

Finally, we find that the third collapsing criterion is met in this case because a significant potential for manipulation of price or production

exists among COFCO Zhangzhou, Yu Xing, and Fujian Zishan for the following reasons. As explained above, there is a level of common ownership between and among these companies. Second, also as discussed above, a significant level of common control exists among these companies. Third, we find that the operations of COFCO, COFCO Zhangzhou, Yu Xing, and Fujian Zishan are sufficiently intertwined. Specifically, since the less-than-fair-value ("LTFV") investigation, COFCO has shifted its source of supply among these affiliates. Fujian Zishan's factors data was initially used for purposes of determining COFCO's dumping margin in the LTFV investigation of this proceeding (see *Notice of Final Determination of Sales at Less Than Fair Market Value: Certain Preserved Mushrooms from the People's Republic of China*, 63 FR 72255, 72258 (December 31, 1998)). Moreover, we note that during the POR Fujian Zishan supplied preserved mushrooms to Xiamen Jiahua, and Yu Xing supplied preserved mushrooms to COFCO (see page exhibit 1 of COFCO's February 9, 2004, submission and page 4 of COFCO's November 10, 2003, submission).

Therefore, based on the above-mentioned findings and following the guidance of 19 CFR 351.401(f), we have preliminarily collapsed the three producers noted above because there is a significant potential for manipulation between these parties. (See March 1, 2004, memorandum from Office Director to the Deputy Assistant Secretary for further discussion.)

#### Affiliation—Green Fresh

In its questionnaire response, Green Fresh stated that when its general manager is not present in the United States, the daily operations of its U.S. subsidiary, Green Mega, are managed by an individual who owns a U.S. company which purchased the subject merchandise directly from Green Fresh during the POR. This individual is also an employee at another U.S. company which also purchased the subject merchandise directly from Green Fresh during the POR.

Section 771(33)(G) of the Act states that "any person who controls any other person and such other person" shall be considered to be "affiliated." Further, "a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person."

Therefore, because Green Fresh, Green Mega, and two of its U.S. customers during the POR appeared to

be affiliated in accordance with section 771(33)(G) of the Act, we issued Green Fresh a supplemental questionnaire which requested Green Fresh to provide the data for its sales to its two U.S. customers (for which the unnamed individual mentioned above was either the owner of or an employee in those companies), as well as Green Mega's sales to its U.S. customers.

Even though it appears that Green Mega and two of Green Fresh's U.S. customers may be affiliated under section 771(33)(G) of the Act, data contained in Green Fresh's responses indicated that Green Mega did not make any sales of subject merchandise during the POR. Specifically, a further examination of the data contained in Green Fresh's questionnaire responses indicates that although Green Mega was set up in March 2002, it did not make any sales of the subject merchandise until February 2003 (which is outside the POR of this administrative review). Therefore, for these preliminary results, we have not used the U.S. sales reported by Green Mega in our analysis. In addition, data contained in Green Fresh's U.S. sales listing indicates that Green Fresh sold the subject merchandise to the two U.S. customers in question prior to the period during which its affiliate Green Mega claims it began its sales operations in the United States (i.e., February 2003). Therefore, based on the facts described above, we preliminarily find an insufficient basis to further consider Green Fresh and two of its U.S. customers affiliated parties within the meaning of section 771(33) of the Act during this POR. However, we intend to re-examine this affiliation issue in the next administrative review, should a review be requested.

#### Facts Available—Gerber/Green Fresh Background

In the final results of the prior administrative review, the Department determined that the application of adverse facts available was warranted for both Gerber and Green Fresh, pursuant to sections 776(a) and (b) of the Act. The Department found that during that period of review, Gerber and Green Fresh had entered into an arrangement through which Gerber exported its own subject merchandise to the United States, but reported Green Fresh as the exporter (see *Certain Preserved Mushrooms from the People's Republic of China: Final Results and Partial Rescission of the New Shipper Review and Final Results and Partial Rescission of the Third Antidumping Duty Administrative Review*, 68 FR 41304, 41306 (July 11, 2003) (and

accompanying decision memorandum at Comment 1) (“*PRC Mushrooms Third Administrative Review*”). For a limited number of transactions, Green Fresh processed some initial paperwork, but for the vast majority of sales, did nothing but sell Gerber its invoices for a commission. The result of this arrangement was that for numerous transactions during that period of review, Gerber made cash deposits of estimated antidumping duties not at its own rate, but at the much lower calculated cash deposit rate assigned to Green Fresh. Thus, Gerber, with Green Fresh’s assistance, was able to circumvent the collection of substantial cash deposits during that period of review.

The Department determined in the final results of the last review that neither Gerber, nor Green Fresh, had acted to the best of its ability. The Department explained that both Gerber and Green Fresh continually misrepresented in their questionnaire responses to the Department the specifics of their true relationship during the POR (see also *PRC Mushrooms Third Administrative Review* at Comment 1). Thus, it was not until verification of these companies that the Department became fully aware of many of the details recounted above. *Id* at Comment 1. The Department further explained that it could not rely upon the information which Gerber and Green Fresh supplied to the Department because through their misrepresentations in numerous questionnaire responses, the veracity and credibility of all the companies’ responses were called into question by the Department. *Id* at Comment 1. Finally, the Department explained that, no matter the motivations of the parties to the Gerber/Green Fresh arrangement, Gerber evaded payment of cash deposits which it was required to pay pursuant to section 751(a)(2)(C) of the Act, and Green Fresh provided the means by which Gerber was able to evade such collection. Thus, pursuant to its discretion to prevent the evasion or circumvention of the antidumping law, the Department determined that the application of total adverse facts available was appropriate for both Gerber and Green Fresh. *Id* at Comment 1 (citing *Mitsubishi Elec. Corp. v. United States*, 700 F. Supp. 538, 555 (1988), *aff’d* 898 F. 2d 1577 (Fed. Cir. 1990).)

#### *The Current POR—Gerber*

Gerber continued to use Green Fresh’s invoices during the POR covered by this administrative review. See Gerber’s Supplemental Questionnaire Response, dated September 3, 2003 at 4–14.

Gerber’s estimated cash deposit rate, derived from its first administrative review, was 121.33 percent during the POR. (See *Amended Final Results of First New Shipper Review and First Antidumping Duty Administrative Review: Certain Preserved Mushrooms from the People’s Republic of China*, 66 FR 35595, 35596 (July 6, 2001).) On the other hand, Green Fresh’s estimated cash deposit rate was 29.87 percent, derived from its own new shipper review. (See *Final Results of New Shipper Review: Certain Preserved Mushrooms from the People’s Republic of China*, 66 FR 45006 (August 27, 2001).) Thus, Gerber continued to circumvent the collection of substantial cash deposits during this POR. Furthermore, just as in the last review, such circumvention could not have occurred but for Green Fresh’s arrangement with Gerber. In addition, Gerber placed a copy of the alleged contractual agreement between itself and Green Fresh during the last administrative review on the record of that review, and the terms of the alleged agreement itself purport to last through May 2002—during the POR covered by this administrative review. This submission, as well as all relevant documentation pertaining to Gerber and Green Fresh’s relationship from the previous administrative review record were placed on the record of this proceeding on February 13, 2004. See *Memorandum to File Re: Gerber and Green Fresh Documents*, February 13, 2004.

The Department has preliminarily determined that the application of total adverse facts available for Gerber is warranted for this administrative review. Gerber did not submit to CBP the appropriate cash deposit rates assigned to it by the Department for numerous transactions during the POR, as directed by the Act. See section 751(a)(2)(C) of the Act. There is an “inherent power of an administrative agency to protect the integrity of its own proceedings.” See *Alberta Gas Chemicals Ltd. v. United States*, 650 F. 2d 9 (2nd Cir. 1981). As the Department provided in its *PRC Mushrooms Third Administrative Review*, “the Department has discretion to administer the law in a manner that prevents evasion of the order.” See *PRC Mushrooms Third Administrative Review* at Comment 1. Indeed, as the Court of International Trade (“CIT”) provided in *Tung Mung Development v. United States*, 219 F. Supp. 2d 1333, 1343 (CIT 2002), *aff’d*, *Tung Mung*, et. al., 03–1073, 03–1095 (January 15, 2004), “the ITA has been vested with authority to administer the

antidumping laws in accordance with the legislative intent. To this end, the ITA has (a) certain amount of discretion (to act) \* \* \* with the purpose in mind of preventing the intentional evasion or circumvention of the antidumping duty law. *Mitsubishi Elec. Corp. v. United States*, 700 F. Supp. 538, 555 (1988), *aff’d* 898 F. 2d 1577 (Fed. Cir. 1990).” Without such authority, the Department, despite being the administrative agency designated with the responsibility of enforcing the antidumping law, would be forced to accept and review sales that were the result of potentially illegal or inappropriate arrangements. See *Elkem Metals Co. v. United States*, 276 F. Supp. 2d. 1296 (CIT 2003) (determining that the ITC correctly applied “best information available,” the precursor to adverse facts available, when the existence of a price fixing scheme came to light following an investigation). Such abuse of the antidumping review process is unacceptable and certainly not a situation Congress anticipated or believed acceptable when it drafted the antidumping statutory provisions. See *Queen’s Flowers De Colombia v. United States*, 981 F. Supp. 617, 621 (CIT 1997) (determining that the Department’s decision to define the term “company” to include several closely related companies was a permissible application of the statute, given its “responsibility to prevent circumvention of the antidumping law”); *Hontex Enterprises, Inc., et. al. v. United States*, 248 F. Supp. 1323, 1343 (CIT 2003) (finding that the Department’s decision to increase the scope of its analysis to include NME exporters was reasonable in light of its “responsibility to prevent circumvention of the antidumping law”). This inherent authority to protect the integrity of the antidumping review process and prevent circumvention of the law is essential to the Department in both its practice and its regulations. See, e.g., 19 CFR 351.401(f)(2003) (the Department’s “collapsing” regulation. Pursuant to this regulation, the Department will treat two or more affiliated producers as a single entity if it determines that there is a “significant potential for the manipulation of price or production”). Thus, because Gerber circumvented the antidumping duty law and evaded the collection of the appropriate cash deposits during the POR, the Department, pursuant to this inherent authority, has determined that the application of total facts available is warranted.

Gerber and Green Fresh have indicated on the record that during this POR Gerber used Green Fresh’s invoices

when exporting some of its merchandise to the United States, although Gerber was providing Green Fresh with apparently no compensation for such usage and Gerber was aware that Green Fresh believed that their business relationship had allegedly ended (see pages 4–8 of Gerber's September 3, 2003, supplemental questionnaire response). Gerber has also indicated on the record that the reason for its arrangement with Green Fresh was allegedly to report information to the PRC government using Green Fresh's name and not its own (see pages 6–7 of the Gerber verification report in the *PRC Mushrooms Third Administrative Review*). In addition, the Department found at verification during the last POR that Gerber mis-characterized its contract disputes with Green Fresh during that POR, disputes that allegedly continued through to the current POR. *Id.* All of this, taken with the fact that Gerber circumvented the collection of the appropriate cash deposits during the POR, leads the Department to determine that it cannot find Gerber's submissions to the Department to be reliable for purposes of this administrative review. The entire antidumping duty review process is inherently dependent upon a respondent being forthright, honest, and participating to the best of its ability, not just in the current review period, but in previous administrative periods when actions taken during those periods directly affect the outcome of a subsequent review or reviews. Gerber has not acted to the best of its ability and its actions with respect to the Gerber/Green Fresh sales have undermined the credibility of all other information it has provided to the Department. Accordingly, the application of facts available is warranted, pursuant to section 776(a) of the Act.

In selecting from among facts available, pursuant to section 776(b) of the Act, an adverse inference is warranted when the Department has determined that a respondent has "failed to cooperate by not acting to the best of its ability to comply with a request for information." The Court of Appeals for the Federal Circuit ("CAFC"), in *Nippon Steel Corporation v. United States*, 337 F. 3d 1373, 1380 (Fed. Cir. 2003), provided an explanation of this standard, holding that the Department need not show intentional conduct existed on the part of the respondent, but merely that a "failure to cooperate to the best of a respondent's ability" existed, *i.e.*, information was not provided "under circumstances in which it is reasonable

to conclude that less than full cooperation has been shown." *Id.* The CAFC did acknowledge, however, that "deliberate concealment or inaccurate reporting" would certainly be a reason to apply adverse facts available ("AFA"), although it indicated that inadequate responses to Department inquiries "would suffice" as well. *Id.* Further, adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." See "Statement of Administrative Action" accompanying the URAA, H.R. Rep. No. 103–316, 870 (1994) ("SAA") at 870; *Borden, Inc. v. United States*, 4 F. Supp. 2d 1221 (CIT 1998); and *Mannesmannrohren-Werke AG v. United States*, 77 F. Supp. 2d 1302 (CIT 1999). Such adverse inferences may include reliance on information derived from (1) the petition; (2) a final determination in the investigation under this title; (3) any previous review under section 751 or determination under section 753, or (4) any other information on the record.

In this case, an adverse inference is warranted because (1) Gerber participated in a scheme which resulted in the circumvention of the antidumping duty order and the evasion of the appropriate level of cash deposits, and (2) Gerber has not acted to the best of its ability in its reporting of information to the United States government, both at the time of entry of the merchandise and in previous submissions to the Department relating to the agreement between Gerber and Green Fresh which directly pertained to the transactions now under review in this POR. Accordingly, the Department is assigning Gerber the PRC-wide rate of 198.63 as total adverse facts available. We have also referred the matter to CBP so that the activities engaged in by this company can be properly addressed under U.S. customs law.

#### *The Current POR—Green Fresh*

With respect to Green Fresh, Green Fresh claims in its questionnaire responses that it did not provide Gerber with any of its sales invoices during the POR and that its business relationship with Gerber was terminated during the period of the prior administrative review (see pages 6–7 of the Green Fresh verification report issued in the *PRC Mushrooms Third Administrative Review*). However, whether Green Fresh supplied Gerber with sales invoices before the POR began, or during the POR, is less important than the fact that Gerber used Green Fresh's invoices during the POR. An administrative review POR is an artificial structure, set

up for the Department to review particular entries exported to the United States at a particular time period. The underlying motivations of the parties to the transactions have little relevance to our analysis outside of a "best of its ability" determination for adverse facts available purposes under section 776(b) of the Act. The entry documents reflect the transaction information necessary for the Department to conduct its standard analysis. In this case, the entry documents show that Green Fresh's invoices were used by Gerber and resulted in the evasion of payment of cash deposits during the POR. Accordingly, to protect the integrity of our administrative proceedings, the Department has preliminarily determined that the application of facts available, pursuant to section 776(a) of the Act, is warranted with respect to Green Fresh.

Green Fresh argues that it did not consent to Gerber's use of its invoices during the POR, and Gerber has stated that it believes Green Fresh had no knowledge of its Green Fresh-invoice sales during the POR (see page 7 of the Green Fresh verification report issued in the *PRC Mushrooms Third Administrative Review* and pages 4–8 of Gerber's September 3, 2003, supplemental questionnaire response). This fact is further supported by the statement of both parties that Green Fresh received no compensation from Gerber during the POR. Thus, the Department has preliminarily determined that application of total facts available would be inappropriate for Green Fresh, as nothing on the record calls into question Green Fresh's other reported information during this administrative review. Rather, we believe that the use of partial facts available is appropriate, limited only to the Gerber/Green Fresh transactions.

Furthermore, section 776(b) of the Act provides that the Department may apply an adverse inference to facts available when it determines that a respondent has not acted to the best of its ability. Green Fresh has provided no proof on the record that it took measures to prevent Gerber from continuing to use its invoices in this POR: Green Fresh has supplied no documentation, legal or otherwise, to show that, in accordance with its own commercial well-being, it attempted in good faith to stop Gerber from actively circumventing the antidumping duty order and evading the payment of cash deposits during the POR. In addition, Green Fresh has provided the Department with no evidence that the terms of its "Agreement" with Gerber were terminated prior to May 2002 (*i.e.*, were



not in effect during the POR covered by this administrative review). All Green Fresh has provided on the record is claims which comply with claims made by Green Fresh officials to Department representatives at verification during the last POR. (See pages 7 of Green Fresh's September 15, 2003, submission; pages 5–7 of the Green Fresh verification report, and pages 6–7 of the Gerber verification report issued in the *PRC Mushrooms Third Administrative Review*.) It stands to reason that if a competitor producer/exporter of subject merchandise uses a company's invoices to export to the United States, in direct competition with that company's business, company officials would take several measures to prevent such misuse of its paperwork. Green Fresh has supplied no documentation on the record of taking any measures whatsoever against Gerber to prevent use of its invoices.

Accordingly, because Green Fresh assisted Gerber in the circumvention of the antidumping duty order and because it has provided no documentary evidence on the record that its relationship ended with Gerber in the prior POR, or that it attempted to the best of its ability to prevent the use of its invoices by Gerber during this POR, the Department has determined that Green Fresh did not act to the best of its ability, pursuant to section 776(b) of the Act. More specifically, as facts available, we have determined that because certain Gerber transactions identified Green Fresh as the exporter and because those transactions used Green Fresh's invoices, these specific transactions should be attributed to Green Fresh in our calculations. Thus, as partial adverse facts available, the Department has applied the PRC-wide rate of 198.63 percent to those sales made by Gerber using Green Fresh's invoices.

#### Facts Available—Shantou Hongda

For the reasons stated below, we have applied total adverse facts available to Shantou Hongda.

Shantou Hongda refused to allow the Department to conduct verification of its submitted information (see September 24, 2003, memorandum from case analyst to the file). Section 776(a)(2)(D) of the Act provides that if an interested party provides information that cannot be verified, the use of facts available is warranted. Furthermore, pursuant to section 776(b) of the Act, the Department may apply an adverse inference if it finds a respondent has not acted to the best of its ability.

The Department was unable to ascertain the accuracy of Shantou Hongda's submitted data or determine

whether Shantou Hongda was entitled to a separate rate because Shantou Hongda refused to allow the Department to conduct verification of its submitted data. Shantou Hongda, accordingly, failed to act to the best of its ability in cooperating with the Department in this segment of the proceeding. As a result, pursuant to section 776(b) of the Act, we have made an adverse inference with respect to Shantou Hongda. Consequently, Shantou Hongda is not eligible to receive a separate rate and will be part of the PRC NME entity, subject to the PRC-wide rate.

In this segment of the proceeding, in accordance with Department practice (see, e.g., *Brake Rotors from the People's Republic of China: Preliminary Results and Preliminary Partial Rescission of the Fifth Antidumping Duty Administrative Review and Preliminary Results of the Seventh New Shipper Review*, 68 FR 1031, 1033 (January 8, 2003)), as adverse facts available, we have assigned to exports of the subject merchandise by Shantou Hongda a rate of 198.63 percent, which is the PRC-wide rate. The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the margin is sufficiently adverse "as to effectuate the purpose of the facts available rule to induce a respondent to provide the Department with complete and accurate information in a timely manner." (See *Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8932, (February 23, 1998).) We believe that the rate assigned is appropriate in this regard.

#### Corroboration of Facts Available

Section 776(c) of the Act requires that the Department corroborate, to the extent practicable, a figure which it applies as facts available. To be considered corroborated, information must be found to be both reliable and relevant. We are applying as AFA the highest rate from any segment of this administrative proceeding, which is a rate calculated in the LTFV investigation. (See *Notice of Amendment of Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Preserved Mushrooms from the People's Republic of China*, 64 FR 8308, 8310 (February 19, 1999).) Unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. The only sources for calculated margins are administrative determinations.

The information upon which the AFA rate is based in the current review (i.e., the PRC-wide rate of 198.63 percent) being assigned to both Gerber and Shantou Hongda was calculated during the LTFV investigation. This AFA rate is the same rate which the Department assigned to Gerber in the previous review and the rate itself has not changed since the LTFV. When using a previously calculated margin as facts available, for purposes of corroboration the Department will consider, in the context of the current review, whether that margin is both reliable and relevant. Furthermore, the AFA rate we are applying for the current review was corroborated in reviews subsequent to the LTFV investigation to the extent that the Department referred to the history of corroboration and found that the Department received no information that warranted revisiting the issue. (See e.g., *Certain Preserved Mushrooms from the People's Republic of China: Final Results and Partial Rescission of the New Shipper Review and Final Results and Partial Rescission of the Third Antidumping Duty Administrative Review*, 68 FR 41304, 41307 (July 11, 2003)). No information has been presented in the current review that calls into question the reliability of this information. Thus, the Department finds that the information is reliable.

With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department will disregard the margin and determine an appropriate margin. For example, in *Fresh Cut Flowers from Mexico: Final Results of Antidumping Administrative Review*, 61 FR 6812 (February 22, 1996), the Department disregarded the highest margin in that case as adverse best information available (the predecessor to facts available) because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin. Similarly, the Department does not apply a margin that has been discredited. See *D & L Supply Co. v. United States*, 113 F.3d 1220, 1221 (Fed. Cir. 1997) (the Department will not use a margin that has been judicially invalidated). The information used in calculating this margin was based on sales and production data submitted by the respondents in the LTFV investigation, together with the most appropriate surrogate value information available to the Department, chosen from



submissions by the parties in the LTFV investigation, as well as gathered by the Department itself. Furthermore, the calculation of this margin was subject to comment from interested parties in the proceeding. Moreover, as there is no information on the record of this review that demonstrates that this rate is not appropriately used as AFA, we determine that this rate has relevance. As the rate is both reliable and relevant, we determine that it has probative value. Accordingly, we determine that the calculated rate of 198.63 percent, which is the current PRC-wide rate, is in accord with the requirement of section 776(c) that secondary information be corroborated (*i.e.*, that it have probative value). We have assigned this AFA rate to exports of the subject merchandise by Gerber and Shantou Hongda, and certain sales made with Green Fresh's invoices but which Green Fresh did not report in its questionnaire response.

#### Separate Rates

In proceedings involving NME countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty deposit rate (*i.e.*, a PRC-wide rate). One respondent in these reviews, Primera Harvest, is wholly owned by persons located outside the PRC. Thus, for Primera Harvest, because we have no evidence indicating that it is under the control of the PRC government, a separate rates analysis is not necessary to determine whether it is independent from government control. (*See Brake Rotors from the People's Republic of China: Final Results and Partial Rescission of Fifth New Shipper Review*, 66 FR 44331 (August 23, 2001), which cites to *Brake Rotors from the People's Republic of China: Preliminary Results and Partial Rescission of the Fifth New Shipper Review and Rescission of the Third Antidumping Duty Administrative Review*, 66 FR 29080 (May 29, 2001) (where the respondent was wholly owned by a U.S. registered company); *Brake Rotors from the People's Republic of China: Final Results and Partial Rescission of Fourth New Shipper Review and Rescission of Third Antidumping Duty Administrative Review*, 66 FR 27063 (May 16, 2001), which cites *Brake Rotors from the People's Republic of China: Preliminary Results and Partial Rescission of the Fourth New Shipper Review and Rescission of the Third Antidumping Duty Administrative Review*, 66 FR 1303, 1306 (January 8, 2001) (where the respondent was wholly owned by a

company located in Hong Kong); and *Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate from the People's Republic of China*, 64 FR 71104, 71105 (December 20, 1999) (where the respondent was wholly owned by persons located in Hong Kong).)

Three respondents, Green Fresh, Guangxi Yulin, and Shenxian Dongxing, are joint ventures of PRC entities. The other respondent, COFCO, is owned by "all of the people." Thus, a separate-rates analysis is necessary to determine whether the export activities of each of these four exporters is independent from government control. (*See Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China ("Bicycles")*, 61 FR 56570 (April 30, 1996).) To establish whether a firm is sufficiently independent in its export activities from government control to be entitled to a separate rate, the Department utilizes a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) ("*Sparklers*"), and amplified in the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) ("*Silicon Carbide*"). Under the separate-rates criteria, the Department assigns separate rates in NME cases only if the respondent can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

#### 1. De Jure Control

Evidence supporting, though not requiring, a finding of *de jure* absence of government control over exporter activities includes: (1) An absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies.

COFCO, Green Fresh, Guangxi Yulin, and Shenxian Dongxing have placed on the administrative record the following documents to demonstrate absence of *de jure* control: the 1994 "Foreign Trade Law of the People's Republic of China;" and the "Company Law of the PRC," effective as of July 1, 1994. In other cases involving products from the PRC, respondents have submitted the following additional documents to demonstrate absence of *de jure* control, and the Department has placed these additional documents on the record as well: the "Law of the People's Republic

of China on Industrial Enterprises Owned by the Whole People," adopted on April 13, 1988 ("the Industrial Enterprises Law"); "The Enterprise Legal Person Registration Administrative Regulations," promulgated on June 13, 1988; the 1990 "Regulation Governing Rural Collectively-Owned Enterprises of PRC;" and the 1992 "Regulations for Transformation of Operational Mechanisms of State-Owned Industrial Enterprises" ("Business Operation Provisions"). (*See* March 1, 2004, memorandum to the file which places the above-referenced laws on the record of this proceeding segment.)

As in prior cases, we have analyzed these laws and have found them to establish sufficiently an absence of *de jure* control of joint ventures and companies owned by "all of the people" absent proof on the record to the contrary. (*See, e.g., Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China*, 60 FR 22544 (May 8, 1995) ("*Furfuryl Alcohol*"), and *Preliminary Determination of Sales at Less Than Fair Value: Certain Partial-Extension Steel Drawer Slides with Rollers from the People's Republic of China*, 60 FR 29571 (June 5, 1995).)

#### 2. De Facto Control

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. (*See Silicon Carbide*, 59 FR at 22587, and *Furfuryl Alcohol*, 60 FR at 22544.) Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether the respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

The Department typically considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) Whether the export prices are set by, or subject to the approval of, a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses. (*See Silicon Carbide*, 59 at 22587 and *Furfuryl Alcohol*, 60 FR at 22545.)

COFCO, Green Fresh, Guangxi Yulin, and Shenxian Dongxing each has asserted the following: (1) Each establishes its own export prices; (2) each negotiates contracts without guidance from any governmental entities or organizations; (3) each makes its own personnel decisions; and (4) each retains the proceeds of its export sales, uses profits according to its business needs, and has the authority to sell its assets and to obtain loans. Additionally, each respondent's questionnaire responses indicate that its pricing during the POR does not suggest coordination among exporters. Furthermore, with respect to Shenxian Dongxing, we examined documentation at verification which substantiated its claims as noted above (see pages 3–7 of the Shenxian Dongxing verification report). As a result, there is a sufficient basis to preliminarily determine that each respondent listed above has demonstrated a *de facto* absence of government control of its export functions and is entitled to a separate rate. Consequently, we have preliminarily determined that each of these respondents has met the criteria for the application of separate rates.

#### Normal Value Comparisons

To determine whether sales of the subject merchandise by COFCO, Green Fresh, Guangxi Yulin, Primera Harvest, and Shenxian Dongxing to the United States were made at prices below normal value ("NV"), we compared each company's export prices ("EPs") or constructed export prices ("CEP") to NV, as described in the "Export Price," "Constructed Export Price," and "Normal Value" sections of this notice, below.

#### Export Price

For COFCO, Green Fresh, Guangxi Yulin, and Shenxian Dongxing, we used EP methodology in accordance with section 772(a) of the Act for sales in which the subject merchandise was first sold prior to importation by the exporter outside the United States directly to an unaffiliated purchaser in the United States, and CEP was not otherwise indicated. We made the following company-specific adjustments:

##### A. Green Fresh

We calculated EP based on packed, FOB foreign port and/or CNF U.S. port prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for foreign inland freight, foreign brokerage and handling charges in the PRC, and international freight in accordance with

section 772(C) of the Act. Because foreign inland freight and foreign brokerage and handling fees were provided by PRC service providers or paid for in renminbi, we based those charges on surrogate rates from India (see "Surrogate Country" section below for further discussion of our surrogate-country selection). To value foreign inland trucking charges, we used Indian truck freight rates published in *Chemical Weekly* and distance information obtained from the following Web sites: <http://www.infreight.com>, and <http://www.sitaindia.com/Packages/CityDistance.php>. To value foreign brokerage and handling expenses, we relied on 1999–2000 public information reported in the LTFV investigation on certain hot-rolled carbon steel flat products from India (see *Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products from India*, 67 FR 50406 (October 3, 2001)). For international freight (*i.e.*, ocean freight), we used the reported expenses because Green Fresh reportedly used only a market-economy freight carrier and paid for those expenses in a market-economy currency (see, *e.g.*, *Brake Rotors from the People's Republic of China: Final Results of Antidumping Duty New Shipper Review*, 64 FR 9972, 9974 (March 1, 1999)). We also revised the Green Fresh's and Guangxi Yulin's reported per-unit packed weights used to derive PRC movement expenses (see Green Fresh and Guangxi Yulin calculation memoranda).

##### B. COFCO and Guangxi Yulin

We calculated export price based on packed, FOB foreign port prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for foreign inland freight, brokerage, and handling expenses in accordance with section 772(C) of the Act. Because foreign inland freight, brokerage, and handling expenses were provided by PRC service providers or paid for in renminbi, we based these charges on surrogate rates from India. (See discussion above for further details.) We revised COFCO's and Guangxi Yulin's reported per-unit packed weights used to derive PRC movement expenses (see COFCO and Guangxi Yulin calculation memoranda).

##### C. Shenxian Dongxing

We calculated export price based on packed, CIF foreign port prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for foreign inland freight,

brokerage, and handling expenses in accordance with section 772(C) of the Act. Because foreign inland freight, brokerage, and handling expenses were provided by PRC service providers or paid for in renminbi, we based these charges on surrogate rates from India. (See discussion above for further details.) Based on our verification findings, Shenxian Dongxing reported its U.S. prices inclusive of international freight and separately reported an amount for this expense on a transaction-specific basis. Because Shenxian Dongxing was paid in full for this expense by its U.S. customers, we deducted this amount from the starting price. We also revised (1) the gross unit price and quantity data reported for one U.S. sales transaction; (2) the reported distance from the factory to the port of exportation; and (3) the per-unit packed weights used to derive PRC movement expenses. (See Shenxian Dongxing verification report at 11–13 and 21–22, and Shenxian Dongxing calculation memorandum.)

#### Constructed Export Price

For Primera Harvest we calculated CEP in accordance with section 772(b) of the Act because the U.S. sale was made for the account of Primera Harvest by its subsidiary in the United States, Primera Harvest, Inc. ("PHI"), to an unaffiliated purchaser in the United States.

We based CEP on a packed, ex-U.S. warehouse price to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included foreign inland freight and foreign brokerage and handling charges in the PRC, international freight (*i.e.*, ocean freight), U.S. import duties and fees (including harbor maintenance fees, merchandise processing fees), U.S. inland freight expenses (*i.e.*, freight from the U.S. port to the U.S. warehouse), and U.S. warehousing expenses. As all foreign inland freight and foreign brokerage and handling expenses were provided by PRC service providers or paid for in renminbi, we valued these services using the Indian surrogate values discussed above. However, unlike the other respondents, one of Primera Harvest's freight service providers also used a barge to transport the subject merchandise to the last delivery location prior to exportation. Therefore, to value foreign inland shipping charges, we used a July 1997 Indian domestic ship rate. For international freight, we used the reported expenses because the

respondent used a market-economy freight carrier and paid for the expenses in a market-economy currency. Based on our verification findings, we revised the reported distance from the factory to the port in the PRC. (See Primera Harvest verification report at 30.) We also revised the Primera Harvest's reported per-unit packed weights used to derive PRC movement expenses (see Primera Harvest calculation memorandum).

In accordance with section 772(d)(1) of the Act, we also deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (credit expenses) and indirect selling expenses incurred in the United States. Based on our verification findings, we revised this company's reported credit expenses. (See also Primera Harvest verification report at 30.) We also made an adjustment for profit in accordance with section 772(d)(3) of the Act.

#### Normal Value

##### A. Non-Market Economy Status

In every case conducted by the Department involving the PRC, the PRC has been treated as an NME country. Pursuant to section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. (See *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Preliminary Results 2001–2002 Administrative Review and Partial Rescission of Review*, 68 FR 7500 (February 14, 2003)). None of the parties to this proceeding has contested such treatment. Accordingly, we calculated NV in accordance with section 773(C) of the Act, which applies to NME countries.

##### B. Surrogate Country

Section 773(c)(4) of the Act requires the Department to value an NME producer's factors of production, to the extent possible, in one or more market economy countries that (1) are at a level of economic development comparable to that of the NME country, and (2) are significant producers of comparable merchandise. India is among the countries comparable to the PRC in terms of overall economic development. (See April 23, 2003, Memorandum from the Office of Policy to the Team Leader.) In addition, based on publicly available information placed on the record, India is a significant producer of the subject merchandise. Accordingly, we selected

India as the surrogate country for purposes of valuing the factors of production because it meets the Department's criteria for surrogate country selection.

##### C. Factors of Production

In accordance with section 773(c) of the Act, we calculated normal value based on the factors of production which included, but were not limited to: (1) Hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs, including depreciation. We used the factors reported by the five respondents, except as noted below. To calculate NV, we multiplied the reported unit factor quantities by publicly available Indian values.

Based on our verification findings, both Primera Harvest and Shenxian Dongxing failed to provide supporting documentation at verification for certain material factors reported in each company's questionnaire responses. Thus, pursuant to section 776(a)(2)(D) of the Act, the Department was forced to use facts otherwise available to value these factors of production.

Specifically, Primera Harvest did not report the electricity amount used in the fresh mushroom growing stage of production even though it claimed otherwise prior to verification. This information is necessary for determining the normal value of its reported U.S. sale. Therefore, absent verifiable data for this energy input, the Department, as facts available, calculated an average electricity amount for the fresh mushroom growing stage based on the verified electricity amounts contained in its response for its other stages of production (e.g., brining and canning).

As for Shenxian Dongxing, this respondent was unable to support at verification its reported water usage figures for four-ounce can sizes. This information is necessary for determining the normal value of Shenxian Dongxing's reported U.S. sales. For the only other can size for which Shenxian Dongxing reported water factors (i.e., 68-ounce can size), the Department was able to verify that data. Therefore, as facts available, the Department used the verified per-unit water factors for Shenxian Dongxing's 68-ounce can sizes of preserved mushrooms for purposes of valuing the costs associated with water used for its 4-ounce can sizes.

Based on our verification findings at Primera Harvest, we also revised the following data in Primera Harvest's response: (1) The reported per-unit consumption factors for citric acid, cottonseed meal, fertilizer, label, tape,

carton, electricity used for brining, electricity used for canning, and the water used for growing, brining, and canning; and (2) the distances from Primera Harvest to its spawn and can suppliers. (See Primera Harvest verification report at 39 through 46, and Primera Harvest calculation memorandum.)

Based on our verification findings at Shenxian Dongxing, we also revised the following data in Shenxian Dongxing's response: (1) The reported per-unit consumption amounts for tin plate, tin plate scrap, labor and electricity for can-making, water and labor for mushroom-growing, label, carton, and glue used for preserved mushrooms contained in 68-ounce can sizes; (2) the reported per-unit consumption amounts for potassium super, calcium carbonate, and cartons used for preserved mushrooms contained in 4-ounce cans; and (3) the distances reported from certain material suppliers. We also disallowed an offset for copper scrap reported by this company because we verified that it simply returned the used copper wire to its vendor for reprocessing rather than sold the copper wire scrap (See Shenxian Dongxing verification report at 19–21, and March 1, 2004, Shenxian Dongxing calculation memorandum.)

With respect to the factors data submitted by COFCO's affiliated producer, Fujian Zishan, we made numerous adjustments to its submitted data which were necessary for purposes of collapsing identical products which both it and another COFCO affiliated producer, Yu Xing, produced during the POR (see COFCO calculation memorandum for further discussion).

The Department's selection of the surrogate values applied in this determination was based on the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices to make them delivered prices. For those values not contemporaneous with the POR and quoted in a foreign currency or in U.S. dollars, we adjusted for inflation using wholesale price indices ("WPIs") published in the International Monetary Fund's *International Financial Statistics*.

To value fresh mushrooms and rice straw, we used an average price based on data contained in the 2001–2002 financial report of Premier Explosives Ltd. ("Premier").

To value cow manure and general and/or wheat straw, we used an average price based on data contained in the 2001–2002 financial report of Flex Foods Ltd. ("Flex Foods") and the 2002–2003 financial report of Agro Dutch Foods, Ltd. ("Agro Dutch") (i.e.,

two Indian producers of the subject merchandise).

To value chicken manure and spawn, we used an average price based on data contained in the 2001–2002 financial reports of Flex Foods and Premier and the 2002–2003 financial report of Agro Dutch. For those respondents which used mother spawn, we also used the average spawn price to value mother spawn because we were unable to obtain publicly available information which contained a price for mother spawn.

To value soil, we used July 2003 price data from two U.S. periodicals: *Mt. Scott Fuel* and *Interval Compost* because we could not obtain an Indian surrogate value for this input.

To value wheat and super phosphate, we used price data contained in Flex Foods' 2001–2002 financial report because no such data was available from the other financial reports on the record.

For those respondents which only purchased tin cans used in the production of preserved mushrooms during the POR, we valued tin cans using the can-purchase-specific price data from the May 21, 2001, public version response submitted by Agro Dutch in the 2nd antidumping duty administrative review of certain preserved mushrooms from India, and derived per-unit, can-size-specific prices using the petitioner's methodology contained in its August 15, 2003, PAI submission.

To value fertilizer, salt, lime, cotton, tin plate scrap, copper conducting wire, and copper wire scrap, can and lid scrap, lacquer, nitrogen, steam coal, sodium hydrosulphite, sodium metabisulphite, and vitamin C, we used February 2002–January 2003 average Indian import values downloaded from the *World Trade Atlas Trade Information System (Internet Version 4.3e)* ("World Trade Atlas"). We also added an amount for loading and additional transportation charges associated with delivering coal to the factory based on June 1999 Indian price data contained in the periodical *Business Line*.

For those respondents which used cotton seed meal, we also used the average cotton price to value cotton seed meal because we were unable to obtain publicly available information which contained a price for cotton seed meal.

To value rye, we used a February 2002–January 2003 average import value for cereal grain from the *World Trade Atlas* because we were unable to obtain a more specific value for this input.

For rice husks, we used a January–March 2000 average import value from the *World Trade Atlas* because we were

unable to obtain price data more contemporaneous with the POR.

For disodium stannous citrate, we used a February 2002–January 2003 average import value for sodium citrate from the *World Trade Atlas* because we were unable to obtain a more specific value for this input.

To value tin plate, we used an average price based on February 2002–January 2003 data contained in *World Trade Atlas* and data contained in Agro Dutch's 2002–2003 financial report.

To value citric acid, calcium carbonate, and urea (*i.e.*, carbamide), we used an average import price based on February 2002–January 2003 data contained in the *World Trade Atlas* and February 2002–January 2003 Indian domestic price data contained in *Chemical Weekly*, consistent with our past practice (*see Certain Preserved Mushrooms from the People's Republic of China: Final Results of Third New Shipper Review and Final Results and Partial Rescission of Second Antidumping Duty Administrative Review*, 67 FR 46173 (July 12, 2002) and accompanying decision memorandum at Comment 7)). For those prices obtained from *Chemical Weekly*, where appropriate, we also deducted an amount for excise taxes based on the methodology applied to values from the same source in a prior review involving the subject merchandise from the PRC. (See page 4 of the May 31, 2001, Preliminary Results Valuation Memorandum for the *Preliminary Results of New Shipper Review: Certain Preserved Mushrooms from the People's Republic of China*, 66 FR 30695 (June 7, 2001) ("Preliminary Results Valuation Memorandum") which has been placed on the record of this proceeding.)

To value calcium phosphate, we used a December 1999 U.S. value from *Chemical Market Reporter* because we could not obtain an Indian surrogate value for this input. Although the value from *Chemical Market Reporter* was in U.S. dollars, it was not contemporaneous with the POR. Therefore, we inflated this value to the POR using WPIs.

To value gypsum, we used an average price based on February 2002–January 2003 data contained in *World Trade Atlas* and data contained in Flex Foods' 2001–2002 financial report.

To value potassium super, we used an average price based on February 2002–January 2003 Indian price data contained in *Chemical Weekly*.

To value water, we used 1995–1996 and 1996–1997 Indian price data from the *Second Water Utilities Data Book*. Since this value was not contemporaneous with the POR, we

adjusted this value for inflation based on wholesale price indices published in the International Monetary Fund's *IFS*.

To value electricity, we used 2001 Indian price data from the International Energy Agency's ("IEA") report, "Electricity Prices for Industry," contained in the *2002 Key World Energy Statistics from the IEA*.

To value diesel oil, we used data contained in the 1999–2000 financial report of Hindustan Lever Ltd.

We valued labor based on a regression-based wage rate, in accordance with 19 CFR 351.408(c)(3).

To value factory overhead and selling, general, and administrative ("SG&A") expenses, we used the 2002–2003 financial data of Agro Dutch and the 2001–2002 financial data of Flex Foods, both Indian producers of the subject merchandise. To value profit, we only used the 2001–2002 financial data of Flex Foods because Agro Dutch experienced a loss during the above-mentioned period. Therefore, in accordance with the Department's practice, we have excluded the financial data of Agro Dutch from the surrogate profit calculation. (*See Notice of Final Determination of Sales at Less Than Fair Value: Certain Ball Bearings and Parts Thereof from the People's Republic of China*, 68 FR 10685 (March 6, 2003) and accompanying decision memorandum at Comment 1)).

We did not use the following two other Indian sources of data to value factory overhead, SG&A or profit: the 2001–2002 fiscal data obtained for Premier and the 2002–2003 fiscal data obtained for Himalya International Ltd. ("Himalya"), because although each company produces the subject merchandise, the subject merchandise is but one of several products produced. Moreover, in accordance with the Department's practice in the prior administrative review, we also do not find it appropriate to use Himalya's financial data because, unlike Himalya, none of the PRC respondents (including Green Fresh and Primera Harvest) have operations overseas which sell non-subject merchandise and which would necessitate incurring additional costs not associated with the sale of mushrooms (*see also Certain Preserved Mushrooms from the People's Republic of China: Final Results and Partial Rescission of the New Shipper Review and Final Results and Partial Rescission of the Third Antidumping Duty Administrative Review*, 68 FR 41304 (July 11, 2003) and accompanying decision memorandum at Comment 4).

Where appropriate, we did not include in the surrogate overhead and SG&A calculations the excise duty

amount listed in the financial reports. We made certain adjustments to the ratios calculated as a result of reclassifying certain expenses contained in the financial reports. For a further discussion of the adjustments made, see the *Preliminary Results Valuation Memorandum*.

To value PRC inland freight for inputs shipped by truck, we used Indian freight rates published in the February 2002–June 2002 issues of *Chemical Weekly* and obtained distances between cities from the following Web sites: <http://www.infreight.com> and <http://www.sitaindia.com/Packages/CityDistance.php>.

To value PRC inland freight for inputs shipped by train (e.g., mother spawn), we used price quotes published in the July 2001 *Reserve Bank of India Bulletin*.

To value corrugated cartons, labels, tape, and glue we used February 2002–January 2003 average import values from the *World Trade Atlas*.

In accordance with the decision of the Court of Appeals for the Federal Circuit in *Sigma Corp. v. United States*, 117 F. 3d 1401 (Fed. Cir. 1997), we revised our methodology for calculating source-to-factory surrogate freight for those material inputs that are valued based, all or in part, on CIF import values in the surrogate country. Therefore, we have added to CIF surrogate values from India a surrogate freight cost using the shorter of the reported distances from either the closest PRC port of importation to the factory, or from the domestic supplier to the factory on an input-specific basis.

#### Preliminary Results of the Review

We preliminarily determine that the following margins exist for the following exporters under review during the period February 1, 2002, through January 31, 2003:

Manufacturer/producer/exporter	Margin (per-cent)
China Processed Food Import & Export Company .....	87.47
Gerber Food (Yunnan) Co., Ltd. ....	198.63
Green Fresh Foods (Zhangzhou) Co., Ltd. ....	31.38
Guangxi Yulin Oriental Food Co., Ltd. ....	0.00
Primera Harvest (Xiangfan) Co., Ltd. ....	46.90
Shenxian Dongxing Foods Co., Ltd. ....	17.65
PRC-Wide Rate (including Shantou Hongda Industrial General Corp.) .....	198.63

We will disclose the calculations used in our analysis to parties to this

proceeding within five days of the date of publication of this notice. Any interested party may request a hearing within 30 days of publication of this notice. If requested, a hearing will be held on June 8, 2004.

Interested parties who wish to request a hearing or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, Room B-099, within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. See 19 CFR 351.310(c).

Issues raised in the hearing will be limited to those raised in case briefs and rebuttal briefs. Case briefs from interested parties may be submitted not later than May 28, 2004, pursuant to 19 CFR 351.309(c). Rebuttal briefs, limited to issues raised in the case briefs, will be due not later than June 4, 2004, pursuant to 19 CFR 351.309(d). Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument. Parties are also encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited.

The Department will issue the final results of these administrative and new shipper reviews, including the results of its analysis of issues raised in any such written briefs or at the hearing, if held, not later than 120 days after the date of publication of this notice.

#### Assessment Rates

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate appraisement instructions for the companies subject to this review directly to CBP within 15 days of publication of the final results of this review. Pursuant to 19 CFR 351.212(b)(1), we will calculate importer- or customer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales. For certain respondents for which we calculated a margin, we do not have the actual entered value because they are not the importers of record for the subject merchandise. For these respondents, we intend to calculate individual customer-specific assessment rates by aggregating the dumping margins calculated for all of the U.S. sales examined and dividing that amount by the total quantity of the

sales examined. To determine whether the duty assessment rates are *de minimis* (i.e., less than 0.50 percent), in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we will calculate customer-specific *ad valorem* ratios based on export prices.

We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer or customer-specific assessment rate calculated in the final results of this review is above *de minimis*.

For entries of the subject merchandise during the POR from companies not subject to these reviews, we will instruct CBP to liquidate them at the cash deposit rate in effect at the time of entry. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of these reviews and for future deposits of estimated duties, where applicable.

#### Cash Deposit Requirements

Upon completion of these reviews, for entries from COFCO, Gerber, Green Fresh, Guangxi Yulin, Primera Harvest, and Shenxian Dongxing, we will require cash deposits at the rate established in the final results as further described below.

Bonding will no longer be permitted to fulfill security requirements for shipments of brake rotors from the PRC produced and exported by Primera Harvest that are entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of the new shipper review. The following cash deposit requirements will be effective upon publication of the final results of the new shipper review for all shipments of subject merchandise from Primera Harvest entered, or withdrawn from warehouse, for consumption on or after the publication date: (1) For subject merchandise manufactured and exported by Primera Harvest, a cash deposit will be required if the cash deposit rate calculated in the final results is not zero or *de minimis*; and (2) for subject merchandise exported by Primera Harvest but not manufactured by Primera Harvest, the cash deposit rate will continue to be the PRC countrywide rate (i.e., 198.63 percent).

The following deposit requirements will be effective upon publication of the final results of the administrative review for all shipments of certain preserved mushrooms from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for

COFCO, Gerber, Green Fresh, Guangxi Yulin, and Shenxian Dongxing will be the rates determined in the final results of review (except that if a rate is *de minimis*, i.e., less than 0.50 percent, no cash deposit will be required); (2) the cash deposit rate for PRC exporters who received a separate rate in a prior segment of the proceeding (which were not reviewed in this segment of the proceeding) will continue to be the rate assigned in that segment of the proceeding (i.e., Raoping Xingyu); (3) the cash deposit rate for the PRC NME entity (including Shantou Hongda, Shenzhen Qunxingyuan, and Zhangzhou Jingxiang) will continue to be 198.63 percent; and (4) the cash deposit rate for non-PRC exporters of subject merchandise from the PRC will be the rate applicable to the PRC exporter that supplied that exporter.

These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

#### Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These administrative and new shipper reviews and notice are in accordance with sections 751(a)(1), 751(a)(2)(B), and 777(I)(1) of the Act and 19 CFR 351.221(b).

Dated: March 1, 2004.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

[FR Doc. 04-5007 Filed 3-4-04; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-601]

#### **Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China; Amended Final Results of Antidumping Duty Administrative Review**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Amended Final Results of Antidumping Duty Administrative Review.

**SUMMARY:** As a result of a final and conclusive court decision, the Department of Commerce is revising the countrywide rate for the final results of June 1, 1993, through May 31, 1994, administrative review of the antidumping duty order on tapered roller bearings and parts thereof, finished and unfinished, from the People's Republic of China.

**EFFECTIVE DATE:** March 5, 2004.

**FOR FURTHER INFORMATION CONTACT:** Yang Jin Chun or Mark Ross, Group 1, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482-5760 and (202) 482-4794 respectively.

#### **SUPPLEMENTARY INFORMATION:**

#### **Applicable Statute and Regulations**

Unless otherwise indicated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994.

#### **Background**

On February 11, 1997, the Department of Commerce (the Department) published in the **Federal Register** its final results of the administrative review of the antidumping duty order on tapered roller bearings and parts thereof, finished and unfinished (TRBs), from the People's Republic of China (PRC). See *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of Antidumping Duty Administrative Review and Revocation in Part of Antidumping Duty Order*, 62 FR 6189 (February 11, 1997). As a result of litigation, the Court of International Trade (CIT) remanded the results of the review to the Department on October 25, 2001. See *Peer Bearing Company v. United States*, 182 F. Supp. 2d 1285 (CIT 2001). The Department completed its final results of redetermination on remand on March 12, 2002, and submitted the results to the CIT; the CIT affirmed the Department's final remand results and dismissed the case. See *Peer Bearing Company v. United States*, No. 97-03-00419, slip op. 02-53 (CIT 2002). In another decision, *Transcom, Inc. v. United States*, 294 F.3d 1371 (Fed. Cir. 2002), the Court of Appeals for the Federal Circuit issued an opinion affirming the Department's original determination in this administrative

review. As there was a final and conclusive court decision in this action, on December 31, 2002, we published in the **Federal Register** a notice of amended final results of administrative review. See *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Amended Final Results of Antidumping Duty Administrative Review*, 67 FR 79902 (December 31, 2002) (*Amended Final Results*). In the *Amended Final Results*, we inadvertently omitted the revised PRC countrywide rate of 60.95 percent from the list of the revised weighted-average margins that was included in the final results of redetermination completed on March 12, 2002, and affirmed on June 5, 2002, by the CIT.

#### **Amendment to Final Results**

Pursuant to section 516A(e) of the Tariff Act of 1930, as amended (the Act), we are now amending the PRC countrywide rate from the final results of the administrative review of the antidumping duty order on TRBs from the PRC for the period of review June 1, 1993, through May 31, 1994. The revised PRC countrywide rate is 60.95 percent.

The Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. We will issue appropriate assessment instructions directly to CBP within 15 days of publication of these amended final results of review.

#### **Cash-Deposit Requirement**

In accordance with section 751(a)(2)(C) of the Act, upon publication of these amended final results, for all PRC exporters which have not been found to be entitled to a separate rate, the cash-deposit rate will be the PRC countrywide rate of 60.95 percent for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date.

We are issuing and publishing this administrative review and notice in accordance with section 751(a)(1) of the Act.

Dated: February 27, 2004.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

[FR Doc. 04-5003 Filed 3-4-04; 8:45 am]

BILLING CODE 3510-DS-S



## DEPARTMENT OF COMMERCE

## International Trade Administration

[A-570-601]

**Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Preliminary Results of 2002-2003 Administrative Review and Partial Rescission of Review**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of preliminary results of 2002-2003 administrative review and partial rescission of the review.

**SUMMARY:** We preliminarily determine that sales of tapered roller bearings and parts thereof, finished and unfinished, from the People's Republic of China, were not made below normal value during the period June 1, 2002, through May 31, 2003. We are also rescinding the review, in part, in accordance with 19 CFR 351.213(d)(3).

If these preliminary results are adopted in our final results, we will instruct U.S. Customs and Border Protection to liquidate entries of tapered roller bearings from Shanghai United Bearing Co., Ltd. without regard to antidumping duties. Interested parties are invited to comment on these preliminary results.

**EFFECTIVE DATE:** March 5, 2004.

**FOR FURTHER INFORMATION CONTACT:** S. Anthony Grasso or Andrew Smith, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-3853 and (202) 482-1276, respectively.

**Background**

On June 15, 1987, the Department of Commerce ("the Department") published in the *Federal Register* (52 FR 22667) the antidumping duty order on tapered roller bearings and parts thereof, finished and unfinished ("TRBs"), from the People's Republic of China ("PRC"). The Department notified interested parties of the opportunity to request an administrative review of this order on June 2, 2003 (68 FR 32727). The period of review ("POR") is June 1, 2002, through May 31, 2003. On June 19, 2003, Shanghai United Bearing Co., Ltd. ("SUB") requested an administrative review. On June 20, 2003, Peer Bearing Company—Changshan ("CPZ") requested an administrative review. On June 30, 2003, Yantai Timken Co., Ltd. ("Yantai Timken") requested an administrative

review. In accordance with 19 CFR 351.221(b)(1), we published a notice of initiation of this antidumping duty administrative review on July 29, 2003 (68 FR 44524).

On August 6, 2003, we sent a questionnaire to the Secretary General of the Basic Machinery Division of the Chamber of Commerce for Import & Export of Machinery and Electronics Products and requested that the questionnaire be forwarded to all PRC companies identified in our initiation notice and to any subsidiary companies of the named companies that produce and/or export the subject merchandise. In this letter, we also requested information relevant to the issue of whether the companies named in the initiation notice are independent from government control. See the "Separate Rates Determination" section, below. On August 6, 2003, courtesy copies of the questionnaire were also sent to companies with legal representation.

On August 20, 2003, Yantai Timken requested that the Department rescind its administrative review. Pursuant to 19 CFR 351.213(d)(1), because Yantai Timken withdrew its request for review within 90 days of the date of publication of the notice of initiation of this review and no other party requested a review of this company, we are rescinding the administrative review of Yantai Timken.

We received responses to the questionnaire in August, September, and October 2003 from CPZ and SUB. We sent out supplemental questionnaires to CPZ and SUB in December 2003, and received responses to these supplemental questionnaires from both companies in December 2003.

On January 21, 2004, CPZ withdrew its request for an administrative review. Although CPZ's withdrawal was submitted to the Department after the 90 day deadline provided by 19 CFR 351.213(d)(1), this section of the Department's regulations permits the Department to extend the time limit for rescission of administrative review if "it is reasonable to do so." As no other party requested a review of CPZ, and the Department has not yet devoted extensive time and resources to this review, pursuant to 19 CFR 351.213(d)(1), we are rescinding the administrative review of CPZ. See Memorandum to Susan Kuhbach, "Partial Rescission of Review," dated January 29, 2004, which is on file in the Department's Central Records Unit ("CRU"), which is located in Room B-099 of the main Department building.

**Scope of the Review**

Merchandise covered by this review includes TRBs and parts thereof,

finished and unfinished, from the PRC; flange, take up cartridge, and hanger units incorporating tapered roller bearings; and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use. This merchandise is currently classifiable under *Harmonized Tariff Schedule* of the United States ("HTSUS") item numbers 8482.20.00, 8482.91.00.50, 8482.99.30, 8483.20.40, 8483.20.80, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.80, 8708.99.80.15, and 8708.99.80.80. Although the HTSUS item numbers are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

**Separate Rates Determination**

The Department has treated the PRC as a nonmarket economy ("NME") country in all previous antidumping cases. In accordance with section 771(18)(C)(i) of the Tariff Act of 1930, as amended ("the Act"), any determination that a foreign country is an NME shall remain in effect until revoked by the Department. None of the parties to this proceeding has contested such treatment in this review. Moreover, parties to this proceeding have not argued that the TRB industry in the PRC is a market-oriented industry. Therefore, we are treating the PRC as an NME country within the meaning of section 773(c) of the Act.

We allow companies in NME countries to receive separate antidumping duty rates for purposes of assessment and cash deposits when those companies can demonstrate an absence of government control, both in law and in fact, with respect to export activities. See *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Preliminary Results of 2001-2002 Administrative Review and Partial Rescission of Review*, 68 FR 7500 (February 14, 2003). To establish whether a company operating in an NME country is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under the test established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) ("Sparklers"), as amplified by the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) ("Silicon Carbide"). As shown below, SUB meets both the *de jure* and *de facto* criteria and is entitled, therefore, to a separate rate.



Accordingly, we preliminarily determine to apply a rate separate from the PRC rate to SUB.

### De Jure Analysis

The Department considers three factors that support, though do not require, a finding of *de jure* absence of governmental control. These factors include: (1) An absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. *See Sparklers*, 56 FR at 20589.

During the POR, SUB was a foreign-joint venture formed under the laws of the PRC and controlled by a board of directors. SUB is a joint venture with majority interest held by a PRC company (that is not a state-owned enterprise) and minority interest held by a U.S. company.

SUB submitted documents on the record that it claims demonstrates the absence of *de jure* governmental control, including "Foreign Trade Law of the People's Republic of China" ("Foreign Trade Law"), "Company Law of the PRC" ("Company Law"), and the "Administrative Regulations of the People's Republic of China Governing the Registration of Legal Corporations" ("Administrative Regulations"). *See* SUB's August 26, 2003, submission at Exhibit 2. In prior TRB cases, the Department has analyzed similar PRC laws and regulations, and found that they establish an absence of *de jure* control. *See, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Preliminary Results of New Shipper Review*, 66 FR 59569 (November 29, 2001).

The Foreign Trade Law grants autonomy to foreign trade operators in management decisions and establishes accountability for their own profits and losses. In prior cases, the Department has analyzed the Foreign Trade Law and found that it establishes an absence of *de jure* control. *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Partial-Extension Steel Drawer Slides with Rollers from the People's Republic of China*, 60 FR 29571 (June 5, 1995); *Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from the People's Republic of China*, 63 FR 72255 (December 31, 1998). We have no new information in this proceeding that would cause us to reconsider this determination.

The Company Law is designed to meet the PRC's needs of establishing a modern enterprise system, and to maintain social and economic order. The Department has noted that the Company Law supports an absence of *de jure* control because of its emphasis on the responsibility of each company for its own profits and losses, thereby decentralizing control of companies. *See Certain Non-Frozen Apple Juice Concentrate from the People's Republic of China: Preliminary Results of 2001–2002 Administrative Review and New Shipper Review, and Partial Rescission of Administrative Review* 68 FR 40244, 40245 (July 7, 2003) ("Apple Juice Preliminary Results").

As noted in *Apple Juice Preliminary Results*, the Administrative Regulations also safeguard social and economic order and established an administrative system for the registration of corporations. The Department has reviewed the Administrative Regulations and concluded that they show an absence of *de jure* control by requiring companies to bear civil liabilities independently, thereby decentralizing control of companies. *See Apple Juice Preliminary Results*, 68 FR at 40245.

Moreover, according to SUB, TRB exports are not affected by quota allocations or export license requirements. The Department has examined the record in this case and does not find any evidence that TRB exports are affected by quota allocations or export license requirements. By contrast, the evidence on the record demonstrates that the producer/exporter has the autonomy to set the price at whatever level it wishes through independent price negotiations with its foreign customers and without government interference. The business license issued to SUB authorizes the company to manufacture and sell bearings as outlined in the business scope section of the license.

Accordingly, we preliminarily determine that there is an absence of *de jure* government control over export pricing and marketing decisions of the respondent.

### De Facto Analysis

The Department uses four factors to determine *de facto* absence of government control over export activities: (1) Whether each exporter sets its own export prices independently of the government and without the approval of a government authority; (2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of

losses; (3) whether each exporter has the authority to negotiate and sign contracts and other agreements; and (4) whether each exporter has autonomy from the government regarding the selection of management. *See Silicon Carbide*, 59 FR at 22587; *Sparklers*, 56 FR at 20589.

SUB asserted that it establishes its own export prices. The board of directors of SUB controls the company and chooses the general manager. Other high-level officials are selected within the company. SUB's sources of funds are its own revenues or bank loans. SUB retains sole control over, and access to, its bank accounts, which are held in SUB's own name. Furthermore, there are no restrictions on the use of the respondent's revenues or profits, including export earnings. SUB's general manager has the right to negotiate and enter into contracts, and may delegate this authority to other employees within the company. There is no evidence that this authority is subject to any level of governmental approval. *See* SUB's August 26, 2003 submission, at pages A–2 through A–11.

Based on the record evidence in this case, the Department notes that SUB: (1) Establishes its own export prices; (2) negotiates contracts without guidance from any governmental entities or organizations; (3) makes its own personnel decisions; (4) retains the proceeds from export sales and uses profits according to its business needs without any restrictions; and (5) does not coordinate or consult with other exporters regarding pricing decisions.

The information on the record supports a preliminary finding that there is an absence of *de facto* governmental control of the export functions of SUB. Consequently, we preliminarily determine that SUB has met the criteria for the application of separate rates.

### Export Price

For all sales made by SUB to the United States, we used export price ("EP"), in accordance with section 772(a) of the Act, because the subject merchandise was sold to unaffiliated purchasers in the United States prior to importation into the United States and because the CEP methodology was not indicated by other circumstances.

We calculated EP based on the CIF price to unaffiliated purchasers. From these prices we deducted amounts for foreign inland freight, foreign brokerage and handling, international freight, and marine insurance. We valued the deductions for foreign inland freight and foreign brokerage and handling using surrogate data, which were based on Indian freight costs. (We selected

India as the surrogate country for the reasons explained in the “Normal Value” section of this notice, below.) As the marine insurance and ocean freight were provided by PRC-owned companies, we valued the deductions using surrogate value data (amounts charged by market-economy providers).

#### Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine normal value (“NV”) for NME countries using a factors-of-production (“FOP”) methodology if: (1) The subject merchandise is exported from an NME country, and (2) the Department finds that the available information does not permit the calculation of NV under section 773(a) of the Act. We have no basis to determine that the available information would permit the calculation of NV using PRC prices or costs. Therefore, we calculated NV based on factors data in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c).

Under the FOP methodology, we are required to value, to the extent possible, the NME producer's inputs in a market-economy country that is at a comparable level of economic development and that is a significant producer of comparable merchandise. We chose India as the primary surrogate country on the basis of the criteria set out in 19 CFR 351.408(b). See the October 16, 2003, Memorandum to File: “Requests for Surrogate Values,” which includes the September 2, 2003, Memorandum to John Brinkmann from Ron Lorentzen: “Antidumping Administrative Review on Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Request for a List of Surrogate Countries” and the March 1, 2004, Memorandum to John Brinkmann: “Selection of a Surrogate Country and Steel Value Sources” (“*Steel Values Memorandum*”) for a further discussion of our surrogate selection. (Both memoranda are on file in the CRU.) However, where we were unable to find suitable Indian data to value factors of production, we have valued these inputs using public information on the record for Indonesia, one of the comparable economies identified by the Office of Policy. See *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of 2001–2002 Administrative Review and Partial Rescission of Review*, 68 FR 70488 (December 18, 2003) and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Amended*

*Final Results of 2001–2002 Administrative Review*, 68 FR 75489 (December 31, 2003) (collectively, “*TRBs XV*”).

We used publicly available information from India and Indonesia to value the various factors. Pursuant to the Department's FOP methodology, we valued the respondent's reported factors of production by multiplying them by the values described below. For a complete description of the factor values used, see the Memorandum to John Brinkmann: “Factors of Production Values Used for the Preliminary Results,” dated March 1, 2004, which is on file in the Department's CRU.

1. *Steel and Scrap*. For hot-rolled alloy steel bars used in the production of cups and cones, we used an adjusted weighted-average of Japanese export values to Indonesia from the Japanese Harmonized Schedule (“HS”) category 7228.30.900 obtained from official Japan Ministry of Finance statistics. We adjusted this data to include costs incurred for ocean freight and marine insurance. This is the same valuation methodology used in *TRBs XV* and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of 2000–2001 Administrative Review, Partial Rescission of Review, and Determination to Revoke Order, in Part*, 67 FR 68990 (November 14, 2002) and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Amended Final Results of 2000–2001 Administrative Review*, 67 FR 72147 (December 4, 2002) (collectively, “*TRBs XIV*”). For cold-rolled steel rods used in the production of rollers, we used Indonesian import data under tariff subheading 7228.50.0000 obtained from the World Trade Atlas (Statistics Indonesia). For cold-rolled steel sheet used in the production of cages, we used Indian import data under Indian tariff subheading 7209.1600 obtained from the *Monthly Statistics of the Foreign Trade of India, Vol. II—Imports* and the World Trade Atlas. For further discussion of selection of steel value sources, see *Steel Values Memorandum*.

As in previous administrative reviews (see e.g., *TRBs XIV*), in this proceeding, we eliminated from our calculation steel imports from NME countries and imports from market economy countries that were made in small quantities. For steel used in the production of cups, cones, and rollers, we also excluded as necessary imports from countries that do not produce bearing-quality steel (see, e.g., *TRBs XIII*). We made adjustments to the import values to include freight costs using the shorter of

the reported distances from either the closest PRC port to the PRC respondent or the domestic supplier to the PRC respondent. See *Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails From the People's Republic of China*, 62 FR 51410 (October 1, 1997); *Sigma Corporation v. United States*, 117 F. 3d 1401 (Fed. Cir. 1997); *Sigma Corporation v. United States*, 86 F. Supp. 2d 1344, 1348 (CIT 2000).

We valued steel scrap recovered from the production of cups, cones, and rollers using Indian import statistics from Indian HAS category 7204.2909 (“Others”), which was renumbered 7204.2990 as of April 2003. We relied on both HS numbers in our calculation. Scrap recovered from the production of cages was valued using import data from Indian HS category 7204.4100. This Indian trade data was obtained from the World Trade Atlas. For further discussion of our calculations of these values, see *Steel Values Memorandum*.

2. *Labor*. Section 19 CFR 351.408(c)(3) of the Department's regulations requires the use of a regression-based wage rate. We have used the regression-based wage rate available on Import Administration's internet Web site at <http://www.ia.ita.doc.gov/wages>.

3. *Overhead, SG&A Expenses, and Profit*. For factory overhead, selling, general, administrative expenses, and profit, we used information contemporaneous to the POR (e.g., fiscal year 2002–2003) obtained from the annual reports of three Indian bearing producers. We calculated factory overhead and selling, general, and administrative expenses as percentages of direct inputs and applied these ratios to the PRC respondent's direct input costs. These expenses were calculated exclusive of labor and electricity, but included employer provident funds and welfare expenses not reflected in the Department's regressed wage rate. This is consistent with the methodology we utilized in *TRBs XV* and *TRBs XIV*. For profit, we totaled the reported profit before taxes for two of the three Indian bearing producers and divided the resulting total by the total calculated cost of production (“COP”) of goods sold. Consistent with *TRBs XV*, we excluded from our profit calculation the Indian company that reported a loss. This percentage was applied to the respondent's total COP to derive a company-specific profit value.

4. *Packing*. We calculated surrogate values for the packing materials reported by SUB (e.g., wooden pallet, plastic bag, steel strip) using import statistics reported in *Monthly Statistics of the Foreign Trade of India, Vol. II—*

**Imports by Commodity.** We multiplied these surrogate values by the reported usage factor to calculate SUB's packing costs.

**5. Electricity.** We calculated the surrogate value for electricity based on an Indian electricity rate published in the *Monthly Energy Review* by the Energy Information Agency. Because this information is not contemporaneous with the POR, we adjusted the data to the POR using Indian wholesale price indices ("WPI") published by the International Monetary Fund.

**6. Diesel Oil.** We calculated the surrogate value for diesel oil based on the Indian high sulphur fuel oil for industry price published in *Energy Prices & Taxes* by the International Energy Agency. Because this information is not contemporaneous with the POR, we adjusted the data to the POR using the Indian WPI.

**7. Foreign Inland Freight.** To value truck freight rates, we used an average of trucking rates quoted in *Indian Chemical Weekly*. This data was contemporaneous to the POR.

**8. Brokerage and Handling.** To value brokerage and handling, we used the public version of a U.S. sales listing reported in the questionnaire response submitted by Meltroll Engineering for *Stainless Steel Bar from India; Final Results of Antidumping Duty Administrative Review and New Shipper Review and Partial Rescission of Administrative Review*, 65 FR 48965 (August 10, 2000). Because this information is not contemporaneous with the POR, we adjusted the data to the POR by using the Indian WPI.

**9. Marine Insurance.** Consistent with *Certain Non-Frozen Apple Juice Concentrate from the People's Republic of China: Final Results and Partial Rescission of the 2001–2002 Administrative Review, and Final Results of the New Shipper Review*, 68 FR 71062 (December 22, 2003), we calculated a value for marine insurance based on the CIF value of shipped TRBs based on a rate obtained by the Department through queries made directly to an international marine insurance provider. We adjusted this marine insurance rate to the POR using the U.S. purchase price indices as published by the International Monetary Fund.

#### Preliminary Results of the Review

We preliminarily determine that the following dumping margin exists for the period June 1, 2002, through May 31, 2003:

Exporter/manufacturer	Weighted-average margin percentage
Shanghai United Bearing Co., Ltd. ....	0.00

#### Public Comment

Interested parties may request a hearing within 30 days of the date of publication of this notice. See 19 CFR 351.310(c). Any hearing, if requested, will be held two days after the scheduled date for submission of rebuttal briefs (see below). Interested parties may submit written arguments in case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in case briefs, may be filed no later than five days after the date of filing the case briefs. Parties who submit briefs in these proceedings should provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f)(3).

The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any such written briefs or hearing, within 120 days of publication of these preliminary results.

#### Assessment Rates

Upon completion of this administrative review, the Department will determine, and U.S. Customs and Border Protection ("CBP") shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated an exporter/importer (or customer)-specific assessment rate for merchandise subject to this review. We calculated an importer (or customer)-specific *ad valorem* rate by aggregating the dumping duties due for all U.S. sales to each importer (or customer) and dividing this amount by the total entered value of the sales to that importer (or customer). In accordance with the requirement set forth in 19 CFR 351.106(c)(2), where an importer (or customer)-specific *ad valorem* rate is less than *de minimis*, we will direct CBP to liquidate without regard to antidumping duties. Where an importer (or customer)-specific *ad valorem* rate is greater than *de minimis*, and the entered value is not available, we will direct CBP to apply the resulting per-unit dollar assessment rate against each unit of merchandise in each of the importer's/customer's entries under the order during the review period. We will

calculate the per unit assessment rate by dividing the total dumping margin (calculated as the difference between NV and EP) for the importer/customer by the total number of units sold to that importer/customer.

All other entries of the subject merchandise during the POR will be liquidated at the antidumping duty rate in place at the time of entry.

#### Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) For the PRC company named above, the cash deposit rate will be the rate for this firm established in the final results of this review, except if the exporter has a *de minimis* rate, i.e., less than 0.50 percent, then no deposit will be required; (2) for previously-reviewed PRC and non-PRC exporters with separate rates, the cash deposit rate will be the company-specific rate established for the most recent period during which they were reviewed; (3) for all other PRC exporters, the rate will be the PRC country-wide rate, which is 60.95 percent (the highest margin from the seventh administrative review of TRBs (1993–1994) pursuant the final results of redetermination on remand from the Court of International Trade, see *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China; Amended Final Results of Antidumping Duty Administrative Review*, signed on February 27, 2004); and (4) for all other non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

#### Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: March 1, 2004.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

[FR Doc. 04-5008 Filed 3-4-04; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 021704B]

#### Groundfish Fisheries of the Bering Sea and Aleutian Islands (BSAI) Area and the Gulf of Alaska, King and Tanner Crab Fisheries in the BSAI, Scallop and Salmon Fisheries Off the Coast of Alaska

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public meetings for the Draft Environmental Impact Statement (DEIS) for Essential Fish Habitat (EFH) Identification and Conservation in Alaska.

**SUMMARY:** NMFS and the North Pacific Fishery Management Council (Council) have completed a DEIS for EFH in Alaska. The DEIS evaluates alternatives and environmental consequences for the following three actions: describing and identifying EFH for fisheries managed by the Council; adopting an approach for the Council to identify Habitat Areas of Particular Concern (HAPCs) within EFH; and minimizing to the extent practicable the adverse effects of Council-managed fishing on EFH. NMFS and the Council will hold three public meetings during the DEIS' comment period.

**DATES:** Public meetings will be held in March and April 2004. See

**SUPPLEMENTARY INFORMATION** under the heading "Meeting Dates, Times, and Locations" for specific dates and times of the public meetings.

**ADDRESSES:** See **SUPPLEMENTARY INFORMATION** under the heading "Meeting Dates, Times, and Locations" for specific locations of the public meetings.

**FOR FURTHER INFORMATION CONTACT:** Mary B. Goode, (907) 586-7636.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Magnuson-Stevens Fishery Conservation and Management Act

(Magnuson-Stevens Act) requires NMFS and the Council to describe and identify EFH in fishery management plans (FMPs), minimize to the extent practicable the adverse effects of fishing on EFH, and identify other actions to encourage the conservation and enhancement of EFH. Federal agencies that authorize, fund, or undertake actions that may adversely affect EFH must consult with NMFS, and NMFS must provide conservation recommendations to Federal and state agencies regarding actions that would adversely affect EFH. The Council also has authority to comment on Federal or state agency actions that would adversely affect the habitat, including EFH, of managed species.

The Council amended its FMPs for the groundfish, crab, scallop, and salmon fisheries in 1998 to address the EFH requirements. The Secretary of Commerce, acting through NMFS, approved the Council's EFH FMP amendments in January 1999 (64 FR 20216; April 26, 1999). In the spring of 1999, a coalition of seven environmental groups and two fishermen's associations filed suit in the United States District Court for the District of Columbia to challenge NMFS' approval of EFH FMP amendments prepared by the Gulf of Mexico, Caribbean, New England, North Pacific, and Pacific Fishery Management Councils. The focus of the litigation was whether NMFS and the Council had adequately evaluated the effects of fishing on EFH and taken appropriate measures to mitigate adverse effects. In September 2000, the court upheld NMFS' approval of the EFH amendments under the Magnuson-Stevens Act, but ruled that the environmental assessment (EA) prepared for the amendments violated the National Environmental Policy Act (NEPA). The court ordered NMFS to complete new and thorough NEPA analyses for each EFH amendment in question. The DEIS for EFH Identification and Conservation in Alaska is the curative NEPA analysis for the North Pacific Council's FMPs. A notice of availability for the DEIS was published in the **Federal Register** on January 16, 2004 (69 FR 2593) and is available on the internet at [www.fakr.noaa.gov/habitat/seis/efheis.htm](http://www.fakr.noaa.gov/habitat/seis/efheis.htm). NMFS is accepting public comments through April 15, 2004.

Most of the controversy surrounding the necessary level of protection needed for EFH concerns the effects of fishing activities on sea floor habitats. Substantial differences of opinion exist as to the extent and significance of habitat alteration caused by bottom trawling and other fishing activities.

The DEIS reexamines the effects of fishing on EFH, presents a wider range of alternatives, and provides a more thorough analysis of potential impacts than the EA approved in 1999. Because the court did not limit its criticism of the 1999 analysis solely to the section that considered the effects of fishing on EFH, the DEIS also reexamines options for identifying EFH and HAPCs.

The actions the Council and NMFS take in association with the DEIS may result in new FMP amendments to modify the existing EFH and/or HAPC designations and/or to implement additional measures to reduce the effects of fishing on EFH.

#### Meeting Dates, Times, and Locations

NMFS and the Council will hold public meetings as follows:

1. Friday, March 19, 2004, 9 a.m. - 12 p.m. Alaska local time (ALT) - NMFS Alaska Fisheries Science Center, Jim Traynor Conference Room, Building 4, 7600 Sand Point Way NE, Seattle, WA.
2. Wednesday, March 31, 2004, 6 p.m. - 9 p.m. ALT - Anchorage Hilton, Katmai/Dillingham Room, 500 West Third Avenue, Anchorage, AK.
3. Thursday, April 8, 2004, 1 p.m. - 4 p.m. ALT - NMFS Alaska Regional Office, 709 West 9th Street, Room 445, Juneau, AK.

#### Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for special accommodations should be directed to Mary B. Goode (see **FOR FURTHER INFORMATION CONTACT**) at least five working days before the meeting date.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: March 1, 2004.

**Bruce C. Morehead,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 04-5019 Filed 3-4-04; 8:45 am]

BILLING CODE 3510-22-S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 022404A]

#### Marine Mammals; File No. 1050-1727-00

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Issuance of permit.

**SUMMARY:** Notice is hereby given that Pribilof Project Office, NOAA, National

Ocean Service, 7600 Sand Point Way, Seattle, Washington 98115 (Principal Investigator: John A. Lindsay), has been issued a permit to take by harassment, Northern fur seals (*Callorhinus ursinus*) for purposes of commercial/educational photography.

**ADDRESSES:** The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713-2289; fax (301)713-0376; and Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802-1668; phone (907)586-7221; fax (907)586-7249.

**FOR FURTHER INFORMATION CONTACT:**

Ruth Johnson or Jennifer Jefferies (301)713-2289.

**SUPPLEMENTARY INFORMATION:** On December 18, 2003, notice was published in the **Federal Register** (68 FR 70493) that a request for a commercial/educational photography permit to take by harassment, Northern fur seals had been submitted by the above-named organization. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 et seq), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 et seq.).

Dated: February 27, 2004.

**Stephen L. Leathery,**

*Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 04-5020 Filed 3-4-04; 8:45 am]

**BILLING CODE 3510-22-S**

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Establishment of an Import Limit for Certain Man-Made Fiber Textile Products Produced or Manufactured in Belarus

March 1, 2004.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner, Bureau of Customs and Border Protection establishing a limit.

**EFFECTIVE DATE:** March 5, 2004.

**FOR FURTHER INFORMATION CONTACT:** Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the

quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927-5850, or refer to the Bureau of Customs and Border Protection Web site at <http://www.cbp.gov>. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at <http://otexa.ita.doc.gov>.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

On December 12, 2003, CITA directed the Commissioner, Bureau of Customs and Border Protection, to establish 2004 import limits for certain wool and man-made fiber textile products produced or manufactured in Belarus (See 68 FR 70494, published on December 18, 2003). That directive included a limit on Category 622, with a sublimit on 622-L. The Bilateral Textile Memorandum of Understanding dated January 10, 2003 between the Governments of the United States and Belarus also calls for an additional sublimit, on Category 622-N. As, the United States and Belarus have not been able to reach agreement on the terms of this additional sublimit, the United States is implementing a sublimit on Category 622-N pending agreement with the Government of Belarus on its terms. This sublimit may be revised if the Governments of the United States and Belarus reach agreement on the terms of the sublimit or if Belarus becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Belarus.

In the letter published below, the Chairman of CITA directs the Commissioner, Bureau of Customs and Border Protection to establish the limit for Category 622-N.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 68 FR 1599, published on January 13, 2003).

**James C. Leonard III,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

March 1, 2004.

Commissioner,  
Bureau of Customs and Border Protection,  
Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order

11651 of March 3, 1972, as amended; you are directed to prohibit, effective on March 5, 2004, entry into the United States for consumption and withdrawal from warehouse for consumption of glass fiber fabric products in Category 622-N<sup>1</sup>, produced or manufactured in Belarus and exported during the twelve-month period beginning on January 1, 2004 and extending through December 31, 2004 in excess of 611,326 square meters.

Textile products in Category 622-N which have been exported to the United States prior to January 1, 2004 shall not be subject to this directive.

Textile products in this category which have been released from the custody of the Bureau of Customs and Border Protection under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1) prior to the effective date of this directive shall not be denied entry under this directive.

This limit may be revised if the Governments of the United States and Belarus reach agreement on the terms of the sublimit or if Belarus becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Belarus.

Import charges will be provided at a later date.

In carrying out the above directions, the Commissioner, Bureau of Customs and Border Protection should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,  
James C. Leonard III,  
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.04-4989 Filed 3-4-04; 8:45 am]

**BILLING CODE 3510-DR-S**

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Produced or Manufactured in the Philippines

March 2, 2004.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner, Bureau of Customs and Border Protection adjusting limits.

**EFFECTIVE DATE:** March 9, 2004.

<sup>1</sup> Category 622-N: HTS numbers 7019.52.40.20, 7019.52.90.20, 7019.59.40.20, 7019.59.90.20.

**FOR FURTHER INFORMATION CONTACT:**

Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927-5850, or refer to the Bureau of Customs and Border Protection website at <http://www.cbp.gov>. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at <http://otexa.ita.doc.gov>.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing,

special shift, carryover, carryforward used, and recrediting unused carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 69 FR 4926, published on February 2, 2004). Also see 68 FR 59923, published on October 20, 2003.

**James C. Leonard III,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

March 2, 2004.

Commissioner,  
*Bureau of Customs and Border Protection,*

*Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 14, 2003, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in the Philippines and exported during the twelve-month period which began on January 1, 2004 and extends through December 31, 2004.

Effective on March 9, 2004, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Twelve-month restraint limit <sup>1</sup>
Levels in Group I	
237 .....	3,169,886 dozen.
331pt./631pt. <sup>2</sup> .....	3,091,523 dozen pairs.
333/334 .....	544,000 dozen of which not more than 78,097 dozen shall be in Category 333.
335 .....	324,093 dozen.
336 .....	1,288,558 dozen.
338/339 .....	3,278,315 dozen.
340/640 .....	1,593,405 dozen.
341/641 .....	1,313,643 dozen.
342/642 .....	1,020,123 dozen.
345 .....	349,848 dozen.
347/348 .....	3,749,837 dozen.
351/651 .....	1,112,646 dozen.
352/652 .....	4,369,655 dozen.
359-C/659-C <sup>3</sup> .....	1,314,771 kilograms.
369-S <sup>4</sup> .....	841,301 kilograms.
433 .....	3,746 dozen.
443 .....	45,291 numbers.
445/446 .....	33,775 dozen.
447 .....	9,442 dozen.
611 .....	10,120,000 square meters.
633 .....	88,314 dozen.
634 .....	891,029 dozen.
635 .....	426,839 dozen.
636 .....	3,213,922 dozen.
638/639 .....	3,367,721 dozen.
643 .....	1,511,150 numbers.
645/646 .....	1,325,011 dozen.
647/648 .....	1,997,352 dozen.
659-H <sup>5</sup> .....	2,404,048 kilograms.
Group II	
200-220, 224-227, 300-326, 332, 359pt. <sup>6</sup> , 360, 362, 363, 369pt. <sup>7</sup> , 400-414, 434-438, 442, 444, 448, 459pt. <sup>8</sup> , 469pt. <sup>9</sup> , 603, 604, 613-620, 624-629, 644, 659-O <sup>10</sup> , 666pt. <sup>11</sup> , 845, 846 and 852, as a group	288,785,726 square meters equivalent.

<sup>1</sup> The limits have not been adjusted to account for any imports exported after December 31, 2003.

<sup>2</sup> Category 331pt.: all HTS numbers except 6116.10.1720, 6116.10.4810, 6116.10.5510, 6116.10.7510, 6116.92.6410, 6116.92.6420, 6116.92.6430, 6116.92.6440, 6116.92.7450, 6116.92.7460, 6116.92.7470, 6116.92.8800, 6116.92.9400 and 6116.99.9510; Category 631pt.: all HTS numbers except 6116.10.1730, 6116.10.4820, 6116.10.5520, 6116.10.7520, 6116.93.8800, 6116.93.9400, 6116.99.4800, 6116.99.5400 and 6116.99.9530.

<sup>3</sup> Category 359-C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659-C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

<sup>4</sup> Category 369-S: only HTS number 6307.10.2005.

<sup>5</sup> Category 659-H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

<sup>6</sup> Category 359pt.: all HTS numbers except 6115.19.8010, 6117.10.6010, 6117.20.9010, 6203.22.1000, 6204.22.1000, 6212.90.0010, 6214.90.0010, 6406.99.1550, 6505.90.1525, 6505.90.1540, 6505.90.2060 and 6505.90.2545.

<sup>7</sup> Category 369pt.: all HTS numbers except 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.22.4020, 4202.22.4500, 4202.22.8030, 4202.32.4000, 4202.32.9530, 4202.92.0805, 4202.92.1500, 4202.92.3016, 4202.92.6091, 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020, 5805.00.3000, 5807.10.0510, 5807.90.0510, 6301.30.0010, 6301.30.0020, 6302.51.1000, 6302.51.2000, 6302.51.3000, 6302.51.4000, 6302.60.0010, 6302.60.0030, 6302.91.0005, 6302.91.0025, 6302.91.0045, 6302.91.0050, 6302.91.0060, 6303.11.0000, 6303.91.0010, 6303.91.0020, 6304.91.0020, 6304.92.0000, 6305.20.0000, 6306.11.0000, 6307.10.1020, 6307.10.1090, 6307.90.3010, 6307.90.4010, 6307.90.5010, 6307.90.8910, 6307.90.8945, 6307.90.9882, 6406.10.7700, 9404.90.1000, 9404.90.8040 and 9404.90.9505.

<sup>8</sup> Category 459pt.: all HTS numbers except 6115.19.8020, 6117.10.1000, 6117.20.9020, 6212.90.0020, 6214.20.0000, 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505, 6406.99.1560.

<sup>9</sup> Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010, 6304.19.3040, 6304.91.0050, 6304.99.1500, 6304.99.6010, 6308.00.0010 and 6406.10.9020.

<sup>10</sup> Category 659-O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659-C); 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659-H); 6115.11.0010, 6115.12.2000, 6117.10.2030, 6117.20.9030, 6212.90.0030, 6214.30.0000, 6214.40.0000, 6406.99.1510 and 6406.99.1540 (Category 659pt.).

<sup>11</sup> Category 666pt.: all HTS numbers except 5805.00.4010, 6301.10.0000, 6301.40.0010, 6301.40.0020, 6301.90.0010, 6302.53.0010, 6302.53.0020, 6302.53.0030, 6302.93.1000, 6302.93.2000, 6303.12.0000, 6303.19.0010, 6303.92.1000, 6303.92.2010, 6303.92.2020, 6303.99.0010, 6304.11.2000, 6304.19.1500, 6304.19.2000, 6304.91.0040, 6304.93.0000, 6304.99.6020, 6307.90.9884, 9404.90.8522 and 9404.90.9522.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,  
James C. Leonard III,  
*Chairman, Committee for the  
Implementation of Textile Agreements.*

[FR Doc.04-4991 Filed 3-4-04; 8:45 am]

BILLING CODE 3510-DR-S

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Designations under the Textile and Apparel Commercial Availability Provision of the African Growth and Opportunity Act (AGOA) and the U.S. - Caribbean Trade Partnership Act (CBTPA)

March 2, 2004.

**AGENCY:** Committee for the  
Implementation of Textile Agreements  
(The Committee).

**ACTION:** Designation.

**SUMMARY:** The Committee has determined that micro-denier 30 singles and 36 singles solution dyed, open-end spun, staple spun viscose yarn, classified in subheading 5510.11.0000 of the Harmonized Tariff Schedule of the United States (HTS), for use in manufacturing fabrics, cannot be supplied by the domestic industry in commercial quantities in a timely manner under the AGOA and the CBTPA. The Committee hereby designates apparel articles that are both cut and sewn or otherwise assembled in one or more eligible beneficiary sub-Saharan African country or in one or more eligible CBTPA beneficiary country from U.S. formed fabrics containing such yarns as eligible to enter free of quotas and duties under HTSUS subheading 9819.11.24 or

9820.11.27, provided all other yarns are U.S. formed and all other fabrics are U.S. formed from or yarns wholly formed in the United States, including fabrics not formed from yarns, if such fabrics are classifiable under HTS heading 5602 or 5603 and are wholly formed in the United States.

**EFFECTIVE DATE:** March 5, 2004.

**FOR FURTHER INFORMATION CONTACT:**  
Janet Heinzen, Office of Textiles and  
Apparel, U.S. Department of Commerce,  
(202) 482-3400.

#### SUPPLEMENTARY INFORMATION:

**Authority:** Authority: Section 112(b)(5)(B) of the AGOA; Section 213(b)(2)(A)(v)(II) of the Caribbean Basin Economic Recovery Act (CBERA), as added by Section 211(a) of the CBTPA; Sections 1 and 6 of Executive Order No. 13191 of January 17, 2001; Presidential Proclamations 7350 and 7351 of October 4, 2000.

#### BACKGROUND

The commercial availability provisions of the AGOA and the CBTPA provide for duty-free and quota-free treatment for apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more beneficiary countries from fabric or yarn that is not formed in the United States if it has been determined that such yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner and certain procedural requirements have been met. In Presidential Proclamations 7350 and 7351 of October 4, 2000, the President proclaimed that this treatment would apply to such apparel articles from fabrics or yarns designated by the appropriate U.S. government authority in the **Federal Register**. In Sections 1 and 6 of Executive Order No. 13191 of January 17, 2001, the Committee was authorized to determine whether yarns or fabrics cannot be supplied by the domestic industry in commercial

quantities in a timely manner under the AGOA or the CBTPA.

On November 3, 2003, the Committee received a request alleging that micro-denier 30 singles and 36 singles solution dyed, open-end spun, staple spun viscose yarn, described above, for use in manufacturing fabrics, cannot be supplied by the domestic industry in commercial quantities in a timely manner under the AGOA and the CBTPA. It requested that apparel articles from U.S. formed fabrics containing such yarns be eligible for preferential treatment under the AGOA and the CBTPA. On November 12, 2003, the Committee requested public comment on the petition (68 FR 68086). On November 28, 2003, the Committee and the U.S. Trade Representative (USTR) sought the advice of the Industry Sector Advisory Committee for Wholesaling and Retailing and the Industry Sector Advisory Committee for Textiles and Apparel. On November 28, 2003, the Committee and USTR offered to hold consultations with the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate (collectively, the Congressional Committees). On December 15, 2003, the U.S. International Trade Commission provided advice on the petition. Based on the information and advice received and its understanding of the industry, the Committee determined that the yarn set forth in the request cannot be supplied by the domestic industry in commercial quantities in a timely manner. On January 2, 2004, the Committee and USTR submitted a report to the Congressional Committees that set forth the action proposed, the reasons for such action, and advice obtained. A period of 60 calendar days since this report was submitted has expired, as required by the AGOA and the CBTPA.



The Committee hereby designates apparel articles that are both cut and sewn or otherwise assembled in one or more eligible beneficiary sub-Saharan African country or in one or more eligible CBTPA beneficiary country from U.S. formed fabrics containing micro-denier 30 singles and 36 singles solution dyed, open-end spun, staple spun viscose yarn, produced on open-ended spindles, classified in subheading HTS subheading 5510.11.0000 as eligible to enter free of quotas and duties under HTSUS subheading 9819.11.24 or 9820.11.27, provided all other yarns are U.S. formed and all other fabrics are U.S. formed from yarns wholly formed in the United States, including fabrics not formed from yarns, if such fabrics are classifiable under HTS heading 5602 or 5603 and are wholly formed in the United States.

An "eligible beneficiary sub-Saharan African country" means a country which the President has designated as a beneficiary sub-Saharan African country under section 506A of the Trade Act of 1974 (19 U.S.C. 2466a), and which has been the subject of a finding, published in the Federal Register, that the country has satisfied the requirements of section 113 of the AGOA (19 U.S.C. 3722), resulting in the enumeration of such country in U.S. note 1 to subchapter XIX of chapter 98 of the HTSUS.

An "eligible CBTPA beneficiary country" means a country which the President has designated as a CBTPA beneficiary country under section 213(b)(5)(B) of the CBERA (19 U.S.C. 2703(b)(5)(B)), and which has been the subject of a finding, published in the Federal Register, that the country has satisfied the requirements of section 213(b)(4)(A)(ii) of the CBERA (19 U.S.C. 2703(b)(4)(A)(ii)), resulting in the enumeration of such country in U.S. note 1 to subchapter XX of Chapter 98 of the HTSUS.

**James C. Leonard III,**

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 04-4990 Filed 3-04-04; 8:45 am]

**BILLING CODE 3510-DR-S**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Submission for OMB Review; Comment Request

**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the

Paperwork Reduction Act (44 U.S.C. chapter 35).

**DATES:** Consideration will be given to all comments received by April 5, 2004.

*Title, Form, and OMB Number:* Application for Department of Defense Common Access Card—DEERS Enrollment; DD Form 1172-2; OMB Number 0704-0415.

*Type of Request:* Extension.

*Number of Respondents:* 300,000.

*Responses Per Respondent:* 1.

*Annual Responses:* 300,000.

*Average Burden Per Response:* 20 minutes.

*Annual Burden Hours:* 100,000.

*Needs and Uses:* This information collection requirement is needed to obtain the necessary data to establish eligibility for the DoD Common Access Card for those individuals not pre-enrolled in the Defense Eligibility Enrollment System (DEERS), and to maintain a centralized database of eligible individuals. This information is used to establish eligibility for the DoD Common Access Card for individuals either employed by or associated with the Department of Defense; is used to control access to DoD facilities and systems; and it provides a source of data for demographic reports and mobilization dependent support.

*Affected Public:* Individuals and households.

*Frequency:* On occasion.

*Respondent's Obligation:* Required to obtain or retain benefits.

*OMB Desk Officer:* Ms. Jacqueline Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

*DOD Clearance Officer:* Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing WHS/ESCD, 1225 Jefferson Davis Highway, Suite 504, Arlington, VA 22202-4302.

Dated: February 27, 2004.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 04-4890 Filed 3-4-04; 8:45 am]

**BILLING CODE 5001-06-M**

## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000-0123]

### Federal Acquisition Regulation; Information Collection; Change in Rates or Terms and Conditions of Service for Regulated Services

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of request for public comments regarding an extension to an existing OMB clearance (9000-0123).

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning change in rates or terms and conditions of service for regulated Services. The clearance currently expires on June 30, 2004.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

**DATES:** Submit comments on or before May 4, 2004.

### FOR FURTHER INFORMATION CONTACT:

Gerald Zaffos, Acquisition Policy Division, GSA (202) 208-6091.

**ADDRESSES:** Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat, 1800 F Street, NW., Room 4035, Washington, DC 20405. Please cite OMB Control Number 9000-0123, Change in Rates or Terms and Conditions of Service for Regulated Services, in all correspondence.

**SUPPLEMENTARY INFORMATION:****A. Purpose**

The FAR clause at 52.241-7 requires the utility to furnish the Government with a complete set of rates, terms and conditions, and any subsequently approved or proposed revisions when proposed.

**B. Annual Reporting Burden**

*Respondents:* 1,028.  
*Responses Per Respondent:* 5.  
*Total Responses:* 5,140.  
*Hours Per Response:* .25 minutes.  
*Total Burden Hours:* 1,285.

**C. Annual Recordkeeping Burden**

*Recordkeepers:* 1,000.  
*Hours Per Recordkeeper:* 1.  
*Total Recordkeeping Burden Hours:* 1,000.  
*Obtaining Copies of Proposals:*  
 Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVA), Room 4035, 1800 F Street, NW., Washington, DC 20405, telephone (202) 501-4755. Please cite OMB Control Number 9000-0123, Change in Rates or Terms and Conditions of Service for Regulated Services, in all correspondence.

Dated: March 2, 2004.

**Rhonda Cundiff,**

*Acting Director, Acquisition Policy Division.*  
 [FR Doc. 04-4999 Filed 3-4-04; 8:45 am]

**BILLING CODE 6820-EP-P**

**DEPARTMENT OF DEFENSE****GENERAL SERVICES  
ADMINISTRATION****NATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION**

[OMB Control No. 9000-0124]

**Federal Acquisition Regulation;  
Information Collection; Capital Credits**

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of request for public comments regarding an extension to an existing OMB clearance (9000-0124).

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement

concerning capital credits. The clearance currently expires on June 30, 2004.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

**DATES:** Submit comments on or before May 4, 2004.

**FOR FURTHER INFORMATION CONTACT:** Gerald Zaffos, Acquisition Policy Division, GSA (202) 208-6091.

**ADDRESSES:** Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat, 1800 F Street, NW., Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000-0124, Capital Credits, in all correspondence.

**SUPPLEMENTARY INFORMATION:****A. Purpose**

The FAR clause 52.241-13, Capital Credits, is designed to obtain an accounting of Capital Credits due the Government when the Government is a member of a cooperative.

**B. Annual Reporting Burden**

*Respondents:* 450.  
*Responses Per Respondent:* 1.  
*Total Responses:* 450.  
*Hours Per Response:* 2.  
*Total Burden Hours:* 900.

**C. Annual Recordkeeping Burden**

*Recordkeepers:* 450.  
*Hours Per Recordkeeper:* 1.  
*Total Recordkeeping Burden Hours:* 450.

*Obtaining Copies of Proposals:*  
 Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVA), Room 4035, Washington, DC 20405, telephone (202) 501-4755. Please cite OMB Control No. 9000-0124, Capital Credits, in all correspondence.

Dated: March 2, 2004.

**Rhonda Cundiff,**

*Acting Director, Acquisition Policy Division.*  
 [FR Doc. 04-5000 Filed 3-4-04; 8:45 am]

**BILLING CODE 6820-EP-P**

**DEPARTMENT OF DEFENSE****GENERAL SERVICES  
ADMINISTRATION****NATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION**

[OMB Control No. 9000-0125]

**Federal Acquisition Regulation;  
Information Collection; Written Refusal  
of a Utility Supplier To Execute a Utility  
Contract**

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of request for public comments regarding an extension to an existing OMB clearance (9000-0125).

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning written refusal of a utility supplier to execute a utility contract. This clearance currently expires on June 30, 2004.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

**DATES:** Submit comments on or before May 4, 2004.

**FOR FURTHER INFORMATION CONTACT:** Gerald Zaffos, Acquisition Policy Division, GSA (202) 208-6091.

**ADDRESSES:** Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this

burden to the General Services Administration, FAR Secretariat, 1800 F Street, NW., Room 4035, Washington, DC 20405. Please cite OMB Control Number 9000-0125, Written Refusal of a Utility Supplier to Execute a Utility Contract, in all correspondence.

**SUPPLEMENTARY INFORMATION:**

**A. Purpose**

The FAR requires that contracts comply with the applicable Federal laws and the relevant parts of the FAR. The written and definite refusal by a utility supplier to execute a tendered contract (41.202(c)) is intended to identify those suppliers who refuse to do so and the rationale of the supplier for refusing.

**B. Annual Reporting Burden**

*Respondents:* 50.

*Responses Per Respondent:* 1.

*Total Annual Responses:* 50.

*Hours Per Response:* .50.

*Total Burden Hours:* 25.

*Obtaining Copies of Proposals:*

Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVA), Room 4035, 1800 F Street, NW., Washington, DC 20405, telephone (202) 501-4755. Please cite OMB Control Number 9000-0125, Written Refusal of a Utility Supplier to Execute a Utility Contract, in all correspondence.

Dated: March 2, 2004.

**Rhonda Cundiff,**

*Acting Director, Acquisition Policy Division.*

[FR Doc. 04-5001 Filed 3-4-04; 8:45 am]

**BILLING CODE 6820-EP-P**

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES  
ADMINISTRATION**

**NATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION**

[OMB Control No. 9000-0126]

**Federal Acquisition Regulation;  
Information Collection; Electric Service  
Territory Compliance Representation**

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of request for comments regarding an extension to an existing OMB clearance (9000-0126).

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal

Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning electric service territory compliance representation. The clearance currently expires on June 30, 2004.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

**DATES:** Submit comments on or before May 4, 2004.

**FOR FURTHER INFORMATION CONTACT:**

Gerald Zaffos, Acquisition Policy Division, GSA (202) 208-6091.

**ADDRESSES:** Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, Washington, DC 20405. Please cite OMB Control Number 9000-0126, Electric Service Territory Compliance Representation, in all correspondence.

**SUPPLEMENTARY INFORMATION:**

**A. Purpose**

The representation at 52.241-1, Electric Service Territory Compliance Representation, is required when proposed alternatives of electric utility suppliers are being solicited. The representation and legal and factual rationale, if requested by the contracting officer, is necessary to ensure Government compliance with Pub. L. 100-202.

**B. Annual Reporting Burden**

*Respondents:* 200.

*Responses Per respondent:* 2.5.

*Total annual responses:* 500.

*Hours Per Response:* .45.

*Total Burden Hours:* 225.

*Obtaining Copies of Proposals:*

Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVA), Room 4035,

1800 F Street, NW., Washington, DC 20405, telephone (202) 501-4755. Please cite OMB Control Number 9000-0126, Electric Service Territory Compliance Representation, in all correspondence.

Dated: March 2, 2004.

**Rhonda Cundiff,**

*Acting Director, Acquisition Policy Division.*

[FR Doc. 04-5002 Filed 3-4-04; 8:45 am]

**BILLING CODE 6820-EP-P**

**DEPARTMENT OF DEFENSE**

**Department of the Army; Corps of  
Engineers**

**Availability of the Final Environmental  
Impact Statement for the Missouri  
River Master Water Control Manual  
Review and Update**

**AGENCY:** Department of the Army, U.S. Army Corps of Engineers, DoD.

**ACTION:** Notice of availability.

**SUMMARY:** In accordance with the National Environmental Policy Act (NEPA) and implementing regulations, a Final Environmental Impact Statement (FEIS) has been prepared to evaluate the environmental impacts of a Preferred Alternative (PA) Water Control Plan for the U.S. Army Corps of Engineers (Corps) operation of the Missouri River Mainstem Reservoir System (Mainstem Reservoir System). The Missouri River Master Water Control Manual (Master Manual) specifies the operating criteria for the operation of six Corps dams and reservoirs on the mainstem of the Missouri River. The original Master Manual was published in December 1960. Revisions were published in revised Master Manuals in 1975 and 1979. The existing Master Manual establishes guidelines for operation of the Mainstem Reservoir System for the multiple project purposes of flood control, hydropower, water supply, water quality, irrigation, navigation, recreation, and fish and wildlife. Each year an Annual Operating Plan is developed using the Water Control Plan outlined in the Master Manual as a guide. During the periods 1987-1993 and 2000-present, the Missouri River basin experienced moderate to severe droughts. There were numerous lawsuits concerning the Corps' operation of the reservoirs during both droughts. In November 1989, the Corps initiated a Review and Update of the Master Manual and published a Draft Environmental Impact Statement (DEIS) in 1994. In response to public comments and requests for additional studies received during the comment period following publication of the DEIS, the

Corps revised that document. In August 2001, the Corps published a Revised Draft Environmental Impact Statement (RDEIS). The RDEIS, which did not identify a PA, analyzed the environmental effects of a set of six alternative water control plans for the Master Manual. During the 6-month public comment period on the RDEIS, 20 Tribal and public workshops and hearings were held throughout the Missouri River basin, including Tribal Reservations, and at some Mississippi River locations. About 54,000 Tribal and public comments were received.

Following publication of the RDEIS, the Corps and the U.S. Fish and Wildlife Service (USFWS) reinitiated consultation under Section 7 of the Endangered Species Act (ESA). On November 3, 2003, the Corps provided the USFWS a Biological Assessment (BA) that identified the Corps proposed action for operation of the Missouri River Mainstem Reservoir System, Missouri River Bank Stabilization and Navigation Project, and Kansas River Reservoir System. The Corps proposed action includes the operational changes identified in the PA. The PA identified in the FEIS includes the features identified below:

- (1) More Stringent Drought Conservation Measures;
- (2) Unbalancing the Upper Three Reservoirs; and
- (3) Increased Summer Releases to the Lower River in Non-navigation Years.

On December 16, 2003, the USFWS provided the Corps an amendment to its November 2000 Biological Opinion (BiOp) on the Operation of the Missouri River Mainstem Reservoir System, Missouri River Bank Stabilization and Navigation Project, and Kansas River Reservoir System. The amended BiOp and comments received in response to the FEIS will be considered in the Corps' decision regarding a selected plan, which will be announced in the Corps' Record of Decision following the FEIS review period.

**DATES:** Due to a court order dated February 26, 2004, issued by the United States District Court for the District of Minnesota, in Case No. 03-MD-1555, *In re: Operation of the Missouri River System Litigation*, the public review period for the FEIS extends from March 5, 2004 to March 19, 2004.

**FOR FURTHER INFORMATION CONTACT:** Questions regarding the FEIS may be sent to Rosemary Hargrave, U.S. Army Corps of Engineers, Northwestern Division, 12565 West Center Road, Omaha, NE 68114-3869. Ms. Hargrave can also be contacted by telephone at

(402) 697-2527, or e-mail at [rosemary.c.hargrave@usace.army.mil](mailto:rosemary.c.hargrave@usace.army.mil).

**SUPPLEMENTARY INFORMATION:** The Missouri River extends 2,619 miles from its source at Hell Roaring Creek to its confluence with the Mississippi River near St. Louis, Missouri. The Missouri River is the longest river in the United States, draining one sixth of the country. The Mainstem Reservoir System consists of six dams and reservoirs located in Montana, North Dakota, South Dakota, and Nebraska. The Mainstem Reservoir System has the capacity to store 73.4 million acre-feet of water, which makes it the largest system of reservoirs in North America. Water flowing down the Missouri River is stored in the six lakes and released as needed for project purposes. The planes of conflict surrounding the revision of the Master Manual are numerous, complex, and contentious. While the basin has made historic progress during the last decade, significant controversy still remains. In the course of the Master Manual Review and Update, much controversy has centered on inclusion of more stringent drought conservation measures in a revised Water Control Plan and on changes in spring and summer releases from Gavins Point Dam for three species provided protection under the Endangered Species Act.

There are 30 Federally recognized American Indian Tribes in the Missouri River basin. Thirteen reservations are located on the mainstem of the Missouri River. The Tribes are dependent sovereign nations and the Corps has a Trust responsibility to the Tribes. The FEIS, which includes a Tribal Appendix, identifies impacts to Tribes resulting from changes in the operation of the Mainstem Reservoir System. Consultation with basin Tribes on the Master Manual Review and Update will continue throughout the NEPA process as the Corps meets its Tribal responsibilities.

Following the review period (*see DATES*), the Corps will prepare a Record of Decision, revise the Master Manual, and develop and implement an Annual Operating Plan in conformance with the revised manual.

Additional information can be found on the Corps' Northwestern Division Web page at <http://www.nwd.usace.army.mil>.

**Luz D. Ortiz,**

*Army Federal Liaison Officer.*

[FR Doc. 04-4879 Filed 3-4-04; 8:45 am]

**BILLING CODE 3710-62-M**

## DEPARTMENT OF DEFENSE

### Department of the Navy

#### Privacy Act of 1974; System of Records

**AGENCY:** Department of the Navy.

**ACTION:** Notice to add a system of records.

**SUMMARY:** The Department of the Navy proposes to add a system of records notice to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

**DATES:** This action will be effective on April 5, 2004 unless comments are received that would result in a contrary determination.

**ADDRESSES:** Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (NO9B10), 2000 Navy Pentagon, Washington, DC 20350-2000.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Doris Lama at (202) 685-6545 or DSN 325-6545.

**SUPPLEMENTARY INFORMATION:** The Department of the Navy's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system reports, as required by 5 U.S.C. 552a(r) of the Privacy Act, were submitted on March 1, 2004, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A-130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996, (61 FR 6427, February 20, 1996).

Dated: March 1, 2004.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**NM01850-3**

#### SYSTEM NAME:

Combat-Related Special Compensation Branch Files.

#### SYSTEM LOCATION:

Combat-Related Special Compensation Branch, 720 Kennon Street SE., Suite 309, Washington Navy Yard, DC 20374-5023.

#### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Navy and Marine Corps career retirees who have applied for combat-related special compensation.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

File contains DD Form 2860; and may also contain: medical reports and disability compensation information from the Department of Veterans Affairs; medical reports from civilian medical facilities; medical board reports; statements of findings of physical evaluation boards; military health records; military personnel records; records and reports from the Defense Finance and Accounting Service; retirement records; pay information; requests for reconsideration submitted by the applicant; intra-agency and interagency correspondence concerning the case; correspondence from and to the applicant, members of Congress, attorneys, representatives, and other cognizant persons or parties; decisional documents issued by the Combat-Related Special Compensation Branch; any additional supporting documentation that the applicant submits to the Combat-Related Special Compensation Branch; and/or copies of any of the foregoing documents.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 1413a; and E.O. 9397 (SSN).

**PURPOSE(S):**

To determine whether Navy and Marine Corps career retirees who have applied for combat-related special compensation are entitled to it by establishing the combat-related circumstance(s), if any, under which the disability was incurred.

To notify the Defense Finance and Accounting Service of the findings in order to effectuate payment of combat-related special compensation.

To respond to official inquiries concerning the applications of particular applicants. The file may also be referred to by the Board for Correction of Naval Records in conjunction with their subsequent review of applications from applicants.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

In addition to those disclosures generally permitted under 5 U.S.C. 552(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552(b)(3) as follows:

To officials and employees of the Department of Veterans Affairs to request and verify information of service-connected disabilities in order to evaluate applications for combat-related special compensation.

The DoD 'Blanket Routine Uses' that appear at the beginning of the Navy's

compilation of systems of records notices apply to this system.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

**STORAGE:**

Paper records, computerized data base, CD-ROM.

**RETRIEVABILITY:**

Name and docket number, and/or Social Security Number.

**SAFEGUARDS:**

Files are maintained in file Suite(s) or other storage devices under the control of authorized personnel during working hours. Computerized system is password protected. Access during working hours is controlled by Naval Council of Personnel Boards personnel and the office space in which the file Suite(s) and storage devices are located is locked after official working hours. The office is located in a building on military installation that has 24-hour gate sentries and 24-hour roving patrols.

**RETENTION AND DISPOSAL:**

Records are retained on-site at the Naval Council of Personnel Boards for one year. After that, they are retired to the Washington National Records Center, 4205 Suitland Road, Suitland, MD 20409 for retention. After a total of 75 years, records are destroyed.

**SYSTEM MANAGER(S) AND ADDRESS:**

Director, Naval Council of Personnel Board, Department of the Navy, 720 Kennon Street SE., Suite 309, Washington Navy Yard, DC 20374-5023.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to Director, Naval Council of Personnel Boards, Department of the Navy, 720 Kennon Street SE., Suite 309, Washington Navy Yard, DC 20374-5023.

The request should contain the full name of the individual, military grade or rate, docket number, Social Security Number and be signed.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to information about themselves contained in the system should address written inquiries to the Director, Naval Council of Personnel Boards, Department of the Navy, 720 Kennon Street SE., Suite 309, Washington Navy Yard, DC 20374-5023.

The request should contain the full name of the individual, military grade

or rate, docket number, Social Security Number and be signed.

**CONTESTING RECORD PROCEDURES:**

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

Navy and Marine Corps career retirees who apply for combat-related special compensation; military medical boards and medical facilities; Department of Veterans Affairs and civilian medical providers and facilities; physical evaluation boards and other activities of the disability evaluation system, Naval Council of Personnel Boards, the Bureau of Medicine and Surgery; the Judge Advocate General; Navy and Marine Corps local command activities; the Defense Finance and Accounting Service; other activities of the Department of Defense; and correspondence from members of Congress, attorneys, representatives, and other cognizant persons or parties.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. 04-4891 Filed 3-4-04; 8:45 am]

BILLING CODE 5001-06-M

**DEPARTMENT OF EDUCATION****Submission for OMB Review; Comment Request**

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before April 5, 2004.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Melanie Kadlic, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address [Melanie\\_Kadlic@omb.eop.gov](mailto:Melanie_Kadlic@omb.eop.gov).

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget

(OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: March 1, 2004.

**Angela C. Arrington,**

*Leader, Regulatory Information Management Group, Office of the Chief Information Officer.*

#### **Office of Vocational and Adult Education**

*Type of Review:* Revision.

*Title:* Applications for Grants under the Community Technology Centers Program.

*Frequency:* Annually.

*Affected Public:* State, local, or tribal gov't, SEAs or LEAs.

*Reporting and Recordkeeping Hour Burden:*

*Responses:* 700. Burden Hours: 39,600.

*Abstract:* The Grant Application Package includes information for grants applicants, including priorities, selection criteria and requirements, along with relevant ED forms and non-regulatory guidance for the CTC.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890-0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Requests for copies of the submission for OMB review; comment request may be accessed from <http://edicsweb.ed.gov>, by selecting the "Browse Pending Collections" link and by clicking on link number 2472. When you access the information collection,

click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202-4651 or to the e-mail address [vivian.reese@ed.gov](mailto:vivian.reese@ed.gov). Requests may also be electronically mailed to the Internet address [OCIO\\_RIMG@ed.gov](mailto:OCIO_RIMG@ed.gov) or faxed to 202-708-9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Shelia Carey at her e-mail address [Shelia.Carey@ed.gov](mailto:Shelia.Carey@ed.gov). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. 04-4955 Filed 3-4-04; 8:45 am]

**BILLING CODE 4000-01-P**

#### **DEPARTMENT OF EDUCATION**

##### **Notice of Proposed Information Collection Requests**

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before May 4, 2004.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4)

Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: March 1, 2004.

**Angela C. Arrington,**

*Leader, Regulatory Information Management Group, Office of the Chief Information Officer.*

#### **Office of Special Education and Rehabilitative Services**

*Type of Review:* Reinstatement.

*Title:* Performance Report—Training Personnel for the Education of Individuals with Disabilities Education Act (IDEA).

*Frequency:* Annually.

*Affected Public:* Not-for-profit institutions (primary).

*Reporting and Recordkeeping Hour Burden:*

*Responses:* 450.

*Burden Hours:* 1,800.

*Abstract:* This package contains instructions and the form necessary for grantees and contractors supported under Training Personnel for the Education of Individuals, CFDA No. 84.325. Data are obtained from grantees and are used to assess and monitor the implementation of IDEA and for Congressional reporting.

Requests for copies of the proposed information collection request may be accessed from <http://edicsweb.ed.gov>, by selecting the "Browse Pending Collections" link and by clicking on link number 2473. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202-4651 or to the e-mail address [vivian\\_reese@ed.gov](mailto:vivian_reese@ed.gov). Requests may also be electronically mailed to the Internet address [OCIO\\_RIMG@ed.gov](mailto:OCIO_RIMG@ed.gov) or faxed to 202-708-9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Shelia Carey at her e-mail address [Shelia.Carey@ed.gov](mailto:Shelia.Carey@ed.gov). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. 04-4956 Filed 3-4-04; 8:45 am]

BILLING CODE 4000-01-P

## DEPARTMENT OF EDUCATION

### Advisory Committee on Student Financial Assistance; Hearing

**AGENCY:** Advisory Committee on Student Financial Assistance, Education.

**ACTION:** Notice of upcoming hearing.

**SUMMARY:** This notice sets forth the schedule and proposed agenda of a forthcoming hearing of the Advisory Committee on Student Financial Assistance. Individuals who will need accommodations for a disability in order to attend the hearing (*i.e.*, interpreting services, assistive listening devices, and/or materials in alternative format) should notify the Advisory Committee no later than Friday, March 19, 2004, by contacting Ms. Hope M. Gray at 202-219-2099 or via e-mail at [hope.gray@ed.gov](mailto:hope.gray@ed.gov). We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The hearing site is accessible to individuals with disabilities. This notice also describes the functions of the Advisory Committee. Notice of this hearing is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public.

**DATES:** Tuesday, March 30, 2004, beginning at 9 a.m. and ending at approximately 4 p.m.

**ADDRESSES:** The University of Illinois at Chicago, Student Service Building, 1200 W. Harrison Street, Conference Room A, Chicago, IL 60607.

**FOR FURTHER INFORMATION CONTACT:** Dr. Brian K. Fitzgerald, Staff Director, Advisory Committee on Student Financial Assistance, Capitol Place, 80 F Street, NW., Suite 413, Washington, DC 20202-7582, (202) 219-2099.

**SUPPLEMENTARY INFORMATION:** The Advisory Committee on Student Financial Assistance is established under section 491 of the Higher Education Act of 1965 as amended by Public Law 100-50 (20 U.S.C. 1098). The Advisory Committee serves as an

independent source of advice and counsel to the Congress and the Secretary of Education on student financial aid policy. Since its inception, the congressional mandate requires the Advisory Committee to conduct objective, nonpartisan, and independent analyses on important aspects of the student assistance programs under Title IV of the Higher Education Act. In addition, Congress expanded the Advisory Committee's agenda in the Higher Education Amendments of 1998 in several important areas: access, Title IV modernization, distance education, and early information and needs assessment. Specifically, the Advisory Committee is to review, monitor and evaluate the Department of Education's progress in these areas and report recommended improvements to Congress and the Secretary.

The FY 2004 Consolidated Appropriations Act (H.R. 2673), which was signed into law on January 23, 2004, directs the Advisory Committee to examine the Federal financial aid formula and application forms in order to simplify and streamline the programs to make the system easier, more responsive, and fairer for students and families. The Advisory Committee is well suited to conduct this study, drawing upon the expertise of its 11 members and its experience conducting other broad studies on financial aid issues. The Advisory Committee also has the particular mission of examining the impact of these issues on low- and moderate-income students, a specific goal of the study.

The Advisory Committee has scheduled this regional field hearing to gather additional feedback about financial aid simplification. The proposed agenda includes expert testimony and discussion of the following issues: (a) The impact of complexities in the financial aid process on access to postsecondary education, particularly for low-income students; (b) opportunities for simplification in the financial aid process and forms; and (c) specific issues related to financial aid simplification, such as early notification of financial aid eligibility. The agenda also includes an afternoon session during which the general public is invited to provide oral and/or written testimony to the Advisory Committee on these issues. The Advisory Committee also invites the public to submit written comments regarding this study to the following e-mail address: [ADV\\_COMSFA@ed.gov](mailto:ADV_COMSFA@ed.gov). We must receive your comments on or before April 23, 2004.

Space for the hearing is limited and you are encouraged to register early if

you plan to attend the hearing. You may register through the Internet by emailing the Advisory Committee at [ADV\\_COMSFA@ed.gov](mailto:ADV_COMSFA@ed.gov) or at [Tracy.Deanna.Jones@ed.gov](mailto:Tracy.Deanna.Jones@ed.gov). Please include your name, title, affiliation, complete address (including Internet and e-mail—if available), and telephone and fax numbers. If you are unable to register electronically, you may mail or fax your registration information to the Advisory Committee staff office at (202) 219-3032. Also, you may contact the Advisory Committee staff at (202) 219-2099. The registration deadline is Monday, March 22, 2004.

Records are kept of all committee proceedings, and are available for public inspection at the Office of the Advisory Committee on Student Financial Assistance, Capitol Place, 80 F Street, NW., Suite 413, Washington, DC from the hours of 9 a.m. to 5:30 p.m., Monday through Friday, except Federal holidays. Information regarding the simplification study will also be made available on the Advisory Committee's Web site, [www.ed.gov/ACSFA](http://www.ed.gov/ACSFA).

Dated: March 1, 2004.

**Dr. Brian K. Fitzgerald,**  
Staff Director, Advisory Committee on Student Financial Assistance.

[FR Doc. 04-4901 Filed 3-4-04; 8:45 am]

BILLING CODE 4000-01-M

## DEPARTMENT OF EDUCATION

### Advisory Committee on Student Financial Assistance

**AGENCY:** Advisory Committee on Student Financial Assistance, Education.

**ACTION:** Notice of announcement of simplification study.

**SUMMARY:** The Advisory Committee on Student Financial Assistance has been charged by Congress to conduct objective, nonpartisan, and independent analyses on important aspects of the student assistance programs under Title IV of the Higher Education Act. In addition, Congress expanded the Committee's agenda in the Higher Education Amendments of 1998 in several important areas: access, Title IV modernization, distance education, and early information and needs assessment. Specifically, the Committee is to review, monitor and evaluate the Department of Education's progress in these areas and report recommended improvements to Congress and the Secretary.

The FY 2004 Consolidated Appropriations Act (H.R. 2673), which was signed into law on January 23, 2004, directs the Advisory Committee to



examine the Federal financial aid formula and application forms in order to simplify and streamline the programs to make the system easier, more responsive, and fairer for students and families. The Advisory Committee is well suited to conduct this study, drawing upon the expertise of its 11 members and its experience conducting other broad studies on financial aid issues. The Advisory Committee also has the particular mission of examining the impact of these issues on low- and moderate-income students, a specific goal of the study.

The legislative charge to the Advisory Committee calls for the study to be conducted in two phases resulting in an interim report and a final report. In executing the study, the Advisory Committee will:

- Examine options to simplify forms and reduce data elements;
- Address the student work penalty;
- Make recommendations on ways to measure the burden of state and local taxes on Expected Family Contribution (EFC);
- Discuss ways to provide students with an early notification of eligibility.

The interim report will be complete six months from the enactment of the bill and will focus on legislative recommendations. The second phase of the study, which will yield a final report one year from enactment, will address regulatory and administrative solutions to financial aid simplification. The Advisory Committee will consult with a wide range of interested parties, and will also consult a forms design expert.

The Advisory Committee initiated the simplification study with a hearing on February 5, 2004. At this hearing, the Advisory Committee heard from Congress, the Department of Education, members of the higher education community, and representatives of the early intervention and outreach community about their perspectives on simplification.

The Advisory Committee has two regional field hearings scheduled to gather additional feedback about financial aid simplification. The Advisory Committee will conduct hearings at the University of Illinois at Chicago (UIC) on March 30, 2004, and at the Fashion Institute of Design and Merchandising (FIDM), Los Angeles Campus, on April 15, 2004.

The Advisory Committee invites the public to submit written comments and recommendations to the following e-mail address: [ADV\\_COMSFA@ed.gov](mailto:ADV_COMSFA@ed.gov). Information regarding the simplification study will also be available on the Advisory Committee's web site, <http://www.ed.gov/ACSFA>.

### Study Questions and Goals

#### *Can Federal Need Analysis Be Simplified and Improved?*

- Can the methodology used to calculate the expected family contribution (EFC) be simplified without significant adverse effects on program intent, costs, integrity, delivery, and distribution of awards?
- Can the number of data elements, and, accordingly, the number and complexity of questions asked of students and families, used to calculate the EFC be reduced without significant adverse effects on program intent, costs, integrity, delivery, and distribution of awards?
- Are the procedures for determining the data elements used to calculate the EFC, including determining and updating offsets and allowances, the most efficient, effective, and fair means to determine a family's available income and assets?
- Is the methodology used to calculate the EFC, specifically the consideration of income earned by a dependent student and its effect on Pell Grant eligibility, an effective and fair means to determine a family's available income and a student's need?

#### *Can Federal Student Air Delivery Be Streamlined and Improved?*

- Can the nature and timing of the FAFSA, eligibility and award determination, financial aid processing, and funds delivery be streamlined further for students and families, institutions, and States?
- Is it feasible to allow students to complete only those limited sections of the FAFSA that apply to their specific circumstances and the State in which they reside?
- Can a widely disseminated printed form, or the use of an Internet or other electronic means, be developed to notify individuals of an estimation of their approximate eligibility for grant, work-study, and loan assistance upon completion and verification of the simplified application form?
- Can information provided on other Federal forms that are designed to determine eligibility for various Federal need-based assistance programs be used to qualify potential students for the simplified needs test?

This document is intended to notify the general public

**DATES:** We must receive your comments on or before April 23, 2004.

**ADDRESSES:** Send all comments about the simplification study to the Advisory Committee using the following email address: [adv\\_COMSFA@ed.gov](mailto:adv_COMSFA@ed.gov).

**FOR FURTHER INFORMATION CONTACT:** Dr. Brian K. Fitzgerald, Staff Director, Advisory Committee on Student Financial Assistance, Capitol Place, 80 F Street, NW., Suite 413, Washington, DC 20202-7582, (202) 219-2099.

#### *Assistance to Individuals With Disabilities in Reviewing the Simplification Study*

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review comments or other documents. Although we will attempt to meet a request we receive, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

**SUPPLEMENTARY INFORMATION:** To ensure that your comments have maximum effect in developing the final recommendations to Congress and the Secretary of Education, we urge you to identify clearly the specific study questions and goals that each of your comments addresses and to arrange your comments in the same order as indicated in the study announcement.

During and after the comment period, you may inspect all public comments about the simplification study at Capitol Place, 80 F Street, NW., Suite 413, Washington, DC between 9 a.m. and 5:30 p.m., eastern time, Monday through Friday (excluding Federal holidays). You may also view comments on the Advisory Committee simplification study at <http://www.ed.gov/ACSFA>.

Dated: March 1, 2004.

**Dr. Brian K. Fitzgerald,**  
Staff Director, Advisory Committee on Student Financial Assistance.

[FR Doc. 04-4900 Filed 3-4-04; 8:45 am]

**BILLING CODE 4000-01-M**

### DEPARTMENT OF ENERGY

#### **Environmental Management Site-Specific Advisory Board, Savannah River**

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Savannah River. The Federal Advisory Committee Act (Pub. L. No. 92-463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

**DATES:** Monday, March 22, 2004, 1 p.m.-6:15 p.m., Tuesday, March 23, 2004, 8:30 a.m.-4 p.m.

**ADDRESSES:** Sheraton Hotel & Conference Center, 2100 Bush River Road, Columbia, SC 29210.

**FOR FURTHER INFORMATION CONTACT:** Gerri Flemming, Closure Project Office, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, SC 29802; Phone: (803) 952-7886.

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Board:* The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

**Tentative Agenda**

*Monday, March 22, 2004*

1 p.m. Combined Committee Meeting  
5:15 p.m. Executive Committee Meeting  
6:15 p.m. Adjourn

*Tuesday, March 23, 2004*

8:30 a.m. Approval of Minutes;  
Agency Updates; Public Comment Session  
9:15 a.m. Facility Disposition & Site Remediation Committee Report  
10 a.m. Waste Management Committee Report  
10:45 a.m. Strategic & Legacy Management Committee Report  
11:30 a.m. Public Comment Session  
12 noon Lunch Break  
1 p.m. Nuclear Materials Committee Report  
2 p.m. Administrative Committee Report  
2:45 p.m. Bylaws Amendment Proposal  
3:45 p.m. Public Comment Session  
4 p.m. Adjourn

If needed, time will be allotted after public comments for items added to the agenda, and administrative details. A final agenda will be available at the meeting Monday, March 22, 2004.

*Public Participation:* The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make the oral statements pertaining to agenda items should contact Gerri Flemming's office at the address or telephone listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct business. Each individual wishing to make public comment will be provided equal time to present their comments.

*Minutes:* The minutes of this meeting will be available for public review and

copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Minutes will also be available by writing to Gerri Flemming, Department of Energy Savannah River Operations Office, PO Box A, Aiken, SC 29802, or by calling her at (803) 952-7886.

Issued at Washington, DC, on March 1, 2004.

**Rachel M. Samuel,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 04-5016 Filed 3-4-04; 8:45 am]

**BILLING CODE 6450-01-P**

**DEPARTMENT OF ENERGY**

**Environmental Management Site-Specific Advisory Board, Idaho National Engineering and Environmental Laboratory**

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Idaho National Engineering and Environmental Laboratory. The Federal Advisory Committee Act (Pub. L. No. 92-463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

**DATES:** Monday, March 22, 2004—8 a.m.–5:30 p.m.

Tuesday, March 23, 2004—8 a.m.–5 p.m.

Opportunities for public participation will be held Monday, March 22 from 12:15 to 12:30 p.m. and 5:15 to 5:30 p.m. and on Tuesday, March 23 from 11:45 to 12 noon and 3:50 to 4:05 p.m. Additional time may be made available for public comment during the presentations.

These times are subject to change as the meeting progresses, depending on the extent of comment offered. Please check with the meeting facilitator to confirm these times.

**ADDRESSES:** Ameritel Inn, 645 Lindsay Boulevard, Idaho Falls, ID 83402.

**FOR FURTHER INFORMATION CONTACT:** Ms. Peggy Hinman, INEEL CAB Administrator, North Wind, Inc., P.O. Box 51174, Idaho Falls, ID 83405, Phone (208) 557-7885, or visit the Board's Internet home page at <http://www.ida.net/users/cab>.

**SUPPLEMENTARY INFORMATION:** *Purpose of the Board:* The purpose of the Board is

to make recommendations to DOE and its regulators in the areas of future use, cleanup levels, waste disposition and cleanup priorities at the INEEL.

The tentative objectives for the meeting include:

- Proposed modifications to the Hazardous Waste Facility Permit for storage and disposal of mixed waste at the Waste Isolation Pilot Plant.
- Authorized funding under the current contract for the Environmental Management program at the INEEL.
- Modified Fiscal Year 2004/2005 Performance Based Incentives.

*Public Participation:* This meeting is open to the public. Written statements may be filed with the Board facilitator either before or after the meeting. Individuals who wish to make oral presentations pertaining to agenda items should contact the Board Chair at the address or telephone number listed above. Request must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer, Richard Provencher, Assistant Manager for Environmental Management, Idaho Operations Office, U.S. Department of Energy, is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Every individual wishing to make public comment will be provided equal time to present their comments.

*Minutes:* The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday through Friday except Federal holidays. Minutes will also be available by writing to Ms. Peggy Hinman, INEEL CAB Administrator, at the address and phone number listed above.

Issued at Washington, DC, on March 1, 2004.

**Rachel Samuel,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 04-5018 Filed 3-4-04; 8:45 am]

**BILLING CODE 6450-01-P**

**DEPARTMENT OF ENERGY**

**National Nuclear Security Administration**

**Presidential Directed Mission Requiring Authorization of National Security Provisions**

**AGENCY:** National Nuclear Security Administration, Department of Energy.

**ACTION:** Notice of emergency action.

**SUMMARY:** The U.S. Department of Energy (DOE) is issuing this notice of emergency action regarding its authorization of national security provisions related to a recent U.S. mission to assist the Libyan government in reducing its inventories of proliferation-sensitive nuclear materials. On January 27, 2004, a U.S.-led team of policy and technical experts successfully extracted from Libya some of its nuclear materials. In order to expedite the removal of these materials from the site, the National Nuclear Security Administration (NNSA) Administrator invoked the national security provisions of 49 CFR 173.7(b) and exempted the transport from DOE Order 461.1, Packaging and Transfer of Materials of National Security Interest, thereby allowing the shipment of items by air to the McGhee Tyson Airport at Knoxville, TN and from there to the Y-12 National Security Complex at Oak Ridge, TN by land transport. The shipment included four cylinders of uranium hexafluoride (UF<sub>6</sub>) of varying enrichment levels.

DOE would normally prepare an Environmental Assessment or Environmental Impact Statement analyzing this shipment pursuant to its National Environmental Policy Act (NEPA) implementing regulations (10 CFR part 1021). However, due to the urgent and classified nature of the actions required to perform this mission, DOE consulted with the Council on Environmental Quality about alternative arrangements with regard to NEPA compliance for its authorization of national security provisions pursuant to the Council NEPA regulation at 40 CFR 1506.11. This notice is issued pursuant to the requirements of 10 CFR 1021.343.

**FOR FURTHER INFORMATION CONTACT:** For further information on these activities or other information related to this notice, contact: William O'Connor, NNSA, Office of Safeguards (NA-243), 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-4867.

For information on the DOE National Environmental Policy Act (NEPA) process, contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (EH-42), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-4600, or leave a message at (800) 472-2756.

**SUPPLEMENTARY INFORMATION:** On December 19, 2003, in a decision announced by the United States, the United Kingdom, and Libya, the Libyan government agreed to disclose all its

weapons of mass destruction and related programs and to open the country to international weapons inspectors to oversee their elimination. In order to assist Libya in the reduction of its proliferation-sensitive materials, the United States, United Kingdom and the International Atomic Energy Agency (IAEA) sent a team of policy and technical experts to Libya. On January 27, 2004, this team, with the full cooperation of the Libyan government, successfully extracted 55,000 pounds of nuclear material and other sensitive equipment from Libya. This shipment included four cylinders of uranium hexafluoride (UF<sub>6</sub>) that required a National Security Exemption under DOE Order 461.1, Packaging and Transfer of Materials of National Security Interest, because the containers were not certified under 49 CFR 173.7(b). The equipment and materials were airlifted out of Libya and brought to the McGhee Tyson Airport in Knoxville, TN. The nuclear cargo then was transported to the Y-12 National Security Complex in Oak Ridge, TN for International Atomic Energy Agency (IAEA) inspection and to prepare cylinders for transport to their final destination.

This material was moved as part of a Presidential directed mission. There was insufficient time between the President's directive and the expected movement of the material to conduct an environmental review; hence, the need for alternative arrangements with regard to NEPA compliance. The NNSA Administrator was provided with a classified environmental review contained in an Appendix to a draft Environmental Impact Statement which bounded the accident scenarios. Following review, the NNSA Administrator invoked the national security provisions of 49 CFR 173.7(b) and exempted this transport from DOE Order 461.1, thereby allowing shipment of these items by air to the McGhee Tyson Airport and from there to their destination by land transport.

The Council on Environmental Quality (CEQ) and the Environmental Protection Agency were briefed in advance of the mission. CEQ found the NNSA's request for alternative arrangements was appropriately limited to the actions necessary to address the immediate impacts and risks associated with this emergency. Based on the briefing that DOE personnel provided, and their commitment to outreach to EPA and appropriate First Responders, CEQ concluded that the NNSA's assessment of the environmental impact of the proposed action, including incorporation of an existing classified

analysis of a similar scenario, provided sufficient alternative arrangements for NEPA compliance. The CEQ also was briefed following the completion of the mission.

The expedited removal of these materials from Libya was consistent with national security goals related to the consolidation, storage, and disposition of potential weapons-usable materials and supports the nonproliferation policies of the United States. Granting this national security exemption supported the expedited removal of the material consistent with the nonproliferation goals of the Department of Energy and the President of the United States.

The Y-12 Site Office ensured that the following conditions were met: First responders at McGhee Tyson Airport were notified of the timing and nature of the shipment. The shipment was escorted by personnel specifically designated by or under the authority of the Department of Energy.

The materials arrived at Y-12 without incident and accordingly without any environmental consequences and will be stored there pending IAEA inspection and shipment to the Portsmouth Gaseous Diffusion Plant, Piketon, OH.

Issued in Washington, DC, on February 27, 2004.

**Henry K. Garson,**

*Associate General Counsel, National Nuclear Security Administration.*

[FR Doc. 04-5017 Filed 3-4-04; 8:45 am]

**BILLING CODE 6450-01-M**

## **ENVIRONMENTAL PROTECTION AGENCY**

**[ER-FRL-6649-1]**

### **Environmental Impact Statements and Regulations; Availability of EPA Comments**

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564-7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 4, 2003 (68 FR 16511).

### **Draft EISs**

ERP No. D-FHW-F40420-MI Rating EC2, I-75 from M-102 to M-59 Proposed Widening, Reconstruction and Transportation Improvements, Funding,

NPDES Permit and U.S. Army COE Section 404 Permit, Oakland County, MI.

Summary: EPA has environmental concerns with the proposed project and recommends additional clarification regarding the two build alternatives (general purpose lane and high occupancy vehicle lane), indirect and cumulative impact analyses, and the use of native vegetation in the project area.

ERP No. D-FHW-L40221-00 Rating EC2, WA-35 Columbia River Crossing, Existing Bridge Replacement across the Columbia River between Hood River, Hood River, OR and White Salmon, WA.

Summary: EPA has environmental concerns with the proposed project related to air toxics, invasive species, rare plant surveys, and intersection design at the project's northern terminus. EPA also requests additional clarification of tribal coordination and environmental justice issues.

ERP No. DS-NIH-J81012-MT Rating EC2, Rocky Mountain Laboratories' (RML) Integrated Research Facility, Construction and Operation, Housing Biosafety Level (BSL)-2, BSL-3 and BSL-4 Laboratories, Analyzation of Associated Potential Impacts, Ravalli County, MT.

Summary: EPA expressed environmental concerns regarding: potential infections of facility staff; adequacy of backflow prevention devices on the water supply and the liquid waste decontamination procedures. EPA recommended the final EIS include development of a comprehensive risk notification and communication program for the local community.

#### Final EISs

ERP No. F-NRC-C06014-NY Generic EIS—License Renewal for R.E. Ginna Nuclear Power Plant, Supplement 14, NUREG-1437, Implementation, Wayne County, NY.

Summary: No formal comment letter was sent to the preparing agency.

Dated: March 2, 2004.

#### Ken Mittelholtz,

*Environmental Protection Specialist, Office of Federal Activities.*

[FR Doc. 04-5014 Filed 3-4-04; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-6648-9]

### Environmental Impacts Statements; Notice of Availability

*Responsible Agency:* Office of Federal Activities, General Information (202) 564-7167 or <http://www.epa.gov/compliance/nepa/> Weekly receipt of Environmental Impact Statements Filed 2/23/2004 Through 2/27/2004 Pursuant to 40 CFR 1506.9.

EIS No. 040088, Draft EIS, FHW, NE, South Omaha Veterans Memorial Bridge Improvements, Across the Missouri River for Highway US-275 between the Cities of Omaha, Nebraska and Council Bluffs, Iowa, NPDES and US Army COE Section 404 Permit, NE and IA, Comment Period Ends: 4/19/2004, Contact: Edward Kosola (402) 437-5973.

EIS No. 040089, Draft EIS, NSF, AK, Development and Implementation of Surface Traverse Capabilities in Antarctica Comprehensive Environmental Evaluation, AK, Comment Period Ends: 6/3/2004, Contact: Polly A. Penhale 703-292-8033. This document is available on the Internet at: [http://www.nsf.gov/od/opp/antarct/treaty/cees/traverse/traverse\\_ee.pdf](http://www.nsf.gov/od/opp/antarct/treaty/cees/traverse/traverse_ee.pdf)

EIS No. 040090, Draft EIS, NSF, AK, Project IceCube Comprehensive Environmental Evaluation, AK, Comment Period Ends: 6/3/2004, Contact: Polly A. Penhale (703) 292-8033. This document is available on the Internet at: [http://www.nsf.gov/od/opp/antarct/treaty/cees/icecube/icecube\\_ee.pdf](http://www.nsf.gov/od/opp/antarct/treaty/cees/icecube/icecube_ee.pdf)

EIS No. 040091, Final EIS, AFS, VT, Greendale Project, Establishment of the Desired Condition stated in the Green Mountain National Forest Land and Resource Management Plan, Manchester Ranger District, Town of Western, Windsor County, VT, Wait Period Ends: 4/5/2004, Contact: Jay Strand (802) 767-4261.

EIS No. 040092, Final EIS, NRC, SC, Generic EIS—License Renewal of Nuclear Plants, Virgil C. Summer Nuclear Station, Supplement 15, Fairfield County, SC, Wait Period Ends: 4/5/2004, Contact: William Dam (301) 415-4014. This document is available on the Internet: <http://www.nrc.gov/reading-rm/adams.html>

EIS No. 040093, Final EIS, NRC, ID, Idaho Spent Fuel Facility, Construction, Operation and Decommissioning, License Application, Idaho National Engineering and Environmental

Laboratory, Butte County, ID, Wait Period Ends: 4/5/2004, Contact: Mathew Blevins (301) 415-7684.

This document is available on the Internet: <http://www.nrc.gov/reading-rm.html>

EIS No. 040094, Final EIS, AFS, OR, Flagtail Fire Recovery Project, To Address the Differences between Existing and Desired Conditions, Blue Mountain Ranger District, Malheur National Forest, Grant County, OR, Wait Period Ends: 4/5/2004, Contact: Linda Batten (541) 575-3000.

This document is available on the Internet at: <http://www.fs.fed.us/r6/malheur>

EIS No. 040095, Draft EIS, AFS, AZ, Coconino, Kaibab, and Prescott National Forests, Integrated Treatment of Noxious and Invasive Weeds, Implementation, Coconino, Mojave and Yavapai Counties, AZ, Comment Period Ends: 4/19/2004, Contact: Charles Ernst (928) 635-8317.

EIS No. 040096, Draft EIS, DOE, IL, Low Emission Boiler System Proof-of-Concept Project, Construction and Operation of a 91-Megawatt Electric Power Plant, Elkhart, Logan County, IL, Comment Period Ends: 4/19/2004, Contact: Lloyd Lorenzi (412) 386-6159

EIS No. 040097, Final EIS, USN, CA, China Lake Naval Air Weapons Station, Proposed Military Operational Increases and Implementation of Associated Comprehensive Land Use and Integrated Natural Resources Management Plans, Located on the North and South Ranges, Inyo, Kern and San Bernardino Counties, CA, Wait Period Ends: 4/5/2004, Contact: John O'Gara (976) 939-3614.

EIS No. 040098, Draft EIS, FHW, IN, US-31 Improvement from Plymouth to South Bend, Running from Southern Terminus at US-30 to Northern Terminus at US-20, Marshall and St. Joseph Counties, IN, Comment Period Ends: 4/26/2004, Contact: Matt Fuller (317) 226-5234.

EIS No. 040099, Final EIS, FHW, OR, South Medford Interchange Project, Interchange Project, Relocation on 1-5 (Pacific Highway) south of its current location at Barnett Road, Funding, Jackson County, OR, Wait Period Ends: 4/5/2004, Contact: John Gernhauser (503) 399-5749.

EIS No. 040100, Final EIS, COE, SD, NE, IA, MO Missouri River Master Water Control Manual Review and Update, Mainstem Reservoir System, New and Updated Information, Missouri River Basin, SD, NE, IA and MO, Wait

Period Ends: 3/19/2004, Contact: Rosemary Hargrave (402) 697-2527.

Under Section 1506.10(d) of the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act the U.S. Environmental Protection Agency has Granted a 15-Day Waiver for the above EIS.

This document is available on the Internet at: <http://www.usace.army.mil>

Dated: March 2, 2004.

**Ken Mittelholtz,**

*Environmental Protection Specialist, Office of Federal Activities.*

[FR Doc. 04-5013 Filed 3-4-04; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

[OPP-2004-0004; FRL-7342-5]

### Endosulfan; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

**DATES:** Comments, identified by docket ID number OPP-2004-0004, must be received on or before April 5, 2004.

**ADDRESSES:** Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

**FOR FURTHER INFORMATION CONTACT:** Dana Pilitt, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-7071; e-mail address: [pilitt.dana@epa.gov](mailto:pilitt.dana@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

###### A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop protection (NAICS 111)

- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

###### B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP-2004-0004. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305-5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr/>.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/> to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket.

Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

###### C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on

the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also, include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at <http://www.epa.gov/edocket/>, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP-2004-0004. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to [opp-docket@epa.gov](mailto:opp-docket@epa.gov), Attention: Docket ID number OPP-2004-0004. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is

placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001, Attention: Docket ID number OPP-2004-0004.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID number OPP-2004-0004. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

#### *D. How Should I Submit CBI to the Agency?*

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

#### *E. What Should I Consider as I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

#### **II. What Action is the Agency Taking?**

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

#### **List of Subjects**

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 17, 2004.

**Lois Rossi,**

*Director, Registration Division, Office of Pesticide Programs.*

#### **Summary of Petition**

The petitioner's summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by Endosulfan Task Force and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the

pesticide chemical residues or an explanation of why no such method is needed.

#### Endosulfan Task Force

##### PP 3E6757

EPA has received pesticide petition (PP 3E6757) from the Endosulfan Task Force, c/o Dr. Bert Volger, Ceres International LLC, 1087 Heartsease Drive, West Chester, PA 19382 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180, by establishing a tolerance for the total residues of endosulfan (6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-6,9-methano-2,4,3-benzodioxathiepin-3-oxide expressed as the sum of  $\alpha$ - and  $\beta$ -endosulfan), and its metabolite, endosulfan-sulfate (6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-6,9-methano-2,4,3-benzodioxathiepin-3-dioxide) in or on the raw agricultural commodity, imported green coffee beans, at 0.2 parts per million (ppm). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA. However, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

##### A. Residue Chemistry

1. *Plant metabolism.* The metabolism of endosulfan in plants and animals is adequately understood for the purpose of the proposed tolerance. Acceptable metabolism studies depicting the qualitative nature of the residues in apple, cucumber, and lettuce have demonstrated that the residues of concern are  $\alpha$ - and  $\beta$ -endosulfan, and endosulfan sulfate.

2. *Analytical method.* Adequate analytical methodology using gas liquid chromatography/electron capture (GLC/EC) detection is available for enforcement purposes. The Pesticide Analytical Manual (PAM) Vol. II lists Methods I, II and III for determination of endosulfan and/or its sulfate metabolite. The limit of detection was validated for each endosulfan isomer and its sulfate metabolite at 0.01 ppm for green coffee beans and its processed fractions, roasted beans and instant coffee.

3. *Magnitude of residues.* A total of 10 field trials were conducted in the major coffee producing countries of Brazil (3), Colombia (3), Guatemala (2), and Mexico (2) to evaluate the quantity of endosulfan residues in or on dried green

coffee beans following application of 700 grams endosulfan per hectare, 3 times during growing season with the last application 30 days before harvest. The highest total endosulfan residues were measured in one dried green bean sample at 0.11 ppm. In addition, there were two trials conducted at a single 3X exaggerated rate (2,100 g/ha) for processing purposes. There were no detectable residues < 0.01 ppm of  $\alpha$ -endosulfan,  $\beta$ -endosulfan and endosulfan sulfate in ground roasted beans or instant coffee. Therefore, the data support the requested tolerance.

##### B. Toxicological Profile

1. *Acute toxicity.* Endosulfan is highly toxic following acute oral exposure and moderately toxic following acute inhalation exposure. In rats, oral median lethal doses (LD<sub>50</sub> values) are 82 milligrams/kilogram (mg/kg) (males) and 30 mg/kg (females). Medium lethal concentrations (LC<sub>50</sub> values) in rats following acute inhalation exposure range from 0.16 to 0.5 milligram liter (mg/L). Endosulfan is considerably less lethal, however, following acute dermal exposure (LD<sub>50</sub> is 2 grams/kilogram (g/kg)). Endosulfan is an eye irritant in rabbits (Toxicity Category I) but is not a dermal irritant or sensitizer.

2. *Genotoxicity.* Endosulfan does not show any mutagenic potential. The submitted mutagenicity studies have satisfied the data requirements for mutagenicity testing, and there is no concern for a mutagenic effect in somatic cells. In the *in vitro* or *in vivo* mutagenicity studies, both the mouse lymphoma forward mutation assay and the unscheduled DNA synthesis assay were negative.

3. *Reproductive and developmental toxicity.* A developmental toxicity study in rats indicated a maternal no observed adverse effect level (NOAEL) of 2.0 mg/kg body weight/day (bwt/day) based on increased mortality, tonic convulsions, increased salivation and decreased body weight gains and food consumption at 6.0 mg/kg bwt/day. The developmental NOAEL was 2.0 mg/kg bwt/day, based on a slight increase in skeletal variations and occurrence of fetuses/litter weighing less than 3 grams at the maternally toxic dose of 6.0 mg/kg bwt/day. An oral developmental toxicity study in rabbits showed a maternal NOAEL of 0.7 mg/kg bwt/day and a maternal lowest observed adverse effect level (LOAEL) of 1.8 mg/kg bwt/day, based on decreased body weight, increased mortality, convulsions, rapid breathing, salivation and hyperactivity during the dosing period. A fetal NOAEL of greater than 1.8 mg/kg bwt/day was also observed in this study. A

two-generation reproduction study in rats indicated parental and offspring NOAELs of 1.2 mg/kg bwt/day, based on reductions in body weight in adults and increased pituitary weights in the female pups of the F0 generation and increased uterine weights in the F1b generation at 6.2 mg/kg bwt/day.

4. *Subchronic toxicity.* In a 13-week feeding study in rats, endosulfan demonstrated a NOAEL of 0.5 mg/kg bwt/day, based on kidney abnormalities and increased spleen weights in male rats at 1.5 mg/kg bwt/day. In a 13-week feeding study in mice the resulting NOAEL was 2.1 mg/kg bwt/day, based on increased mortality in males and females seen at 7.3 mg/kg bwt/day. A 6-month toxicity feeding study in dogs established a NOAEL of 5 mg/kg bwt/day. The LOAEL was 15 mg/kg bwt/day based on clinical signs of neurotoxicity and gastrointestinal disturbances.

Two subchronic dermal studies were conducted with endosulfan. In the first study endosulfan was applied dermally 5 days a week over 30 days. The resulting NOAELs were established at 12 mg/kg/day in females and 96 mg/kg/day in males. The LOAELs were determined to be 48 mg/kg/day in females and 192 mg/kg/day in males based on increased mortality in males and females and increased serum cholinesterase inhibitor (ChE) activity inhibition in males. In the second study endosulfan was administered dermally 5 days a week over 30 days. The LOAELs were determined to be 81 mg/kg/day in males and 27 mg/kg/day in females based on increased mortality. The NOAELs were established at 27 mg/kg/day in males and 9 mg/kg/day in females. The dose and endpoint selected for risk assessment was dermal NOAEL = 12 mg/kg/day based on mortality in female rats at 27 mg/kg/day LOAEL. The endpoints from both 21-day dermal toxicity studies discussed above were considered in arriving at the NOAEL and LOAEL. In a subchronic inhalation study conducted with endosulfan, rats were exposed 6 hours per day, 5 days per week for a total of 21 exposures over 29 days. The NOAEL was 0.001 mg/L (0.2 mg/kg bwt/day), based on decreased body weight gain and leukocyte counts in the males and increased creatinine values in the females at 0.002 mg/L (0.4 mg/kg bwt/day).

5. *Neurotoxicity.* In an acute neurotoxicity study with endosulfan the resulting NOAEL was 12.5 mg/kg for males and 1.5 mg/kg for females. The LOAEL was 25 mg/kg for males based on increased incidences of stilted gait, squatting posture, and irregular respiration, as well as decreased spontaneous activity. The LOAEL was 3



mg/kg for females, based on an increased incidence of stilted gait, squatting posture, straddled hindlimbs, irregular respirations, panting and bristled coat and decreased spontaneous activity.

6. *Chronic toxicity.* A 12-month chronic feeding study in dogs established a NOAEL of 0.65 and 0.57 mg/kg bwt/day in males and females, respectively. The LOAEL for this study was established at 1.75 mg/kg bwt/day, based on decreased body weight gain in males and increased incidences of neurological findings in males and females. A 24-month chronic feeding/carcinogenicity study in rats demonstrated a NOAEL of 0.6 mg/kg bwt/day and an average LOAEL of 3.4 mg/kg bwt/day, based on decreased body weight gains and increased incidences of marked progressive glomerulonephrosis in males and females, enlarged kidneys in females and blood vessel aneurysms in males. A 24-month carcinogenicity study in mice was conducted. The NOAEL was 0.9 mg/kg bwt/day, based on increased incidences of mortality in females at 2.65 mg/kg. Under the conditions of these studies, there was no evidence of carcinogenic potential.

7. *Animal metabolism.* Following absorption from the oral or dermal exposure routes endosulfan is partially metabolized, primarily to endosulfan sulfate. Minor metabolites include endosulfan diol, endosulfan ether, endosulfan  $\alpha$ -hydroxy ether, and endosulfan lactone. None of the minor metabolites of endosulfan are believed to be of toxicological concern. Endosulfan and its metabolites partition and accumulate predominately in the kidney and liver. Following dietary exposure to endosulfan, a large amount of endosulfan sulfate is recovered in the liver, small intestine and visceral fat, and only a trace amount is recovered in muscle tissue. Endosulfan and its metabolites are excreted in both the urine and feces, the latter being the predominant route of excretion. Most of an absorbed dose of endosulfan is excreted within a few days to a few weeks, depending upon dose and route of exposure.

8. *Metabolite toxicology.* The major metabolite of concern for endosulfan is endosulfan sulfate. This metabolite is assumed to have equal toxicity to the parent.

9. *Endocrine disruption.* There is no evidence of endocrine effects in any of the studies conducted with endosulfan, thus, there is no indication at this time that endosulfan causes endocrine effects.

### C. Aggregate Exposure

1. *Dietary exposure.* Permanent tolerances have been established for the total residues of the insecticide endosulfan (6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-6,9-methano-2,4,3-benzodioxathiepin-3-oxide, expressed as the sum of  $\alpha$ - and  $\beta$ -endosulfan), and its metabolite, endosulfan-sulfate (6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-6,9-methano-2,4,3-benzodioxathiepin-3-dioxide) in or on a variety of raw agricultural and livestock commodities (40 CFR 180.182). The chronic assessment is based on a chronic population adjusted dose (cPAD) of 0.0006 mg/kg bwt/day. The acute assessment is based on an acute PAD of 0.0015 mg/kg bwt/day for all population subgroups.

i. *Food.* Chronic and acute dietary exposure estimates resulting from the proposed import tolerance and all currently registered uses of endosulfan, except the pending deletions of succulent beans, succulent peas, grapes, spinach, and pecans are well within acceptable limits for all sectors of the population. Potential dietary exposures from food were estimated using the Dietary Exposure Evaluation Model (DEEM™) software system (Exponent, Inc.) and the 1989-1992 USDA consumption data. For the chronic analysis, mean residue values were calculated from the appropriate field trials or monitoring studies conducted for endosulfan, which were reviewed in EPA's most recent dietary risk assessment (Endosulfan reregistration eligibility decisions (RED), November 2002). For the acute analysis, the entire distribution of field trial residue or monitoring values were used for non-blended and partially blended commodities, and the mean value used for blended commodities. Processing factors were obtained from good laboratory practice (GLP) processing studies for the appropriate commodities. Percent crop treated values were obtained from the RED dietary assessment. The dietary risks (acute, chronic) concerning the tolerance reassessment indicate the following: for the chronic analysis the most highly exposed sub-population was children 1–2 years old utilizing 19.5% of the cPAD or 0.000117 mg/kg bwt/day. The U.S. population utilized 6.4% of the cPAD or 0.000038 mg/kg bwt/day. For the acute analysis the most highly exposed sub-population was again children 1–2 years old at 84.9% of the aPAD or 0.001274 mg/kg bwt/day, and the U.S. population at 52.6% of the aPAD or 0.000790 mg/kg bwt/day. Actual exposures are likely

to be much less because of the conservative assumptions incorporated in this analysis. The calculated residue contribution from imported coffee is negligible.

ii. *Drinking water.* Since the proposed tolerance is for imported coffee beans, there is no potential exposure from drinking water.

2. *Non-dietary exposure.* Endosulfan is currently not registered for use on any sites that would result in residential exposure.

### D. Cumulative Effects

To our knowledge there are currently no available data or other reliable information indicating that any toxic effects produced by endosulfan would be cumulative with those of other pesticides; thus only the potential risks of endosulfan have been considered in this assessment of its aggregate exposure. Once the final framework for cumulative risk assessments is available, the Agency might identify other substances that share a common mechanism of toxicity with endosulfan.

### E. Safety Determination

1. *U.S. population.* Using the assumptions and data described above and based on the completeness and reliability of the toxicity data, it can be concluded that the residue contribution of the proposed import tolerance is negligible. The chronic dietary exposure will utilize at most 6.4% of the cPAD, and 52.6% of the aPAD for the U.S. population. The actual exposure, both acute and chronic, is likely to be much less as more realistic data and models are developed. EPA generally has no concern for exposures below 100% of the PAD because the PAD represents the level at or below which daily aggregate exposure over a lifetime will not pose appreciable risk to human health. The Endosulfan Task Force concludes, there is reasonable certainty that no harm will occur to the U.S. population from acute or chronic aggregate exposure (food and drinking water) to residues of endosulfan in view of the proposed tolerance for imported coffee beans.

2. *Infants and children.* The EPA HIARC has chosen to retain the 10X Food Quality Protection Act (FQPA) Safety factor for endosulfan. Using the assumptions and data described in the exposure section above, the percent of the cPAD that will be used for exposure to residues of endosulfan in food for children 1–2 yrs (the most highly exposed sub-population) is 19.4%. Infants utilize 8.9% of the cPAD. For the acute assessment children 1–2 yrs utilize 84.9% of the aPAD and infants utilize 71.7% of the aPAD. The

proposed import tolerance will have minimal impact on the dietary risk. Therefore, there is a reasonable certainty that no harm will occur to infants and children from aggregate exposure (food and drinking water) to residues of endosulfan from imported coffee beans.

#### *F. International Tolerances*

A codex maximum residue level MRL of 0.1 ppm has been established for residues of endosulfan in or on coffee beans.

[FR Doc. E4-463 Filed 3-4-04; 8:45 am]

BILLING CODE 6560-50-S

## ENVIRONMENTAL PROTECTION AGENCY

[OPPT-2004-0080]; FRL-7349-5]

### Certain New Chemicals; Receipt and Status Information

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from January 19, 2004 to February 13, 2004, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

**DATES:** Comments identified by the docket ID number OPPT-2004-0080 and the specific PMN number or TME number, must be received on or before April 5, 2004.

**ADDRESSES:** Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

**FOR FURTHER INFORMATION CONTACT:** Barbara Cunningham, Director, Environmental Assistance Division, Office of Pollution Prevention and

Toxics (7408M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 554-1404; e-mail address: [TSCA-Hotline@epa.gov](mailto:TSCA-Hotline@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. General Information**

###### *A. Does this Action Apply to Me?*

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

###### *B. How Can I Get Copies of this Document and Other Related Information?*

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPPT-2004-0080. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566-1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566-0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr/>.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/> to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may

be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

### C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number and specific PMN number or TME number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

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ii. *E-mail.* Comments may be sent by e-mail to [oppt.ncic@epa.gov](mailto:oppt.ncic@epa.gov), Attention: Docket ID Number OPPT-2004-0080 and PMN Number or TME Number. In contrast to EPA's electronic public

docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

3. *By hand delivery or courier.* Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number OPPT-2004-0080 and PMN Number or TME Number. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564-8930.

### D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

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### E. What Should I Consider as I Prepare My Comments for EPA?

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4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice or collection activity.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action and the specific PMN number you are commenting on in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

## II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from January 10, 2004 to February 13, 2004, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

## III. Receipt and Status Report for PMNs

This status report identifies the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the

following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available.

In Table I of this unit, EPA provides the following information (to the extent

that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the

submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

#### I.—70 PREMANUFACTURE NOTICES RECEIVED FROM: 1/19/04 TO 02/13/04

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P-04-0268	01/21/04	04/19/04	Cytec Industries Inc.	(G) Intermediate for the production of a customer specific phosphine oxide.	(G) Aryl magnesium halide
P-04-0269	01/21/04	04/19/04	3M	(S) Battery cathode material	(G) Mixed metal oxide
P-04-0270	01/21/04	04/19/04	Teknor Apex Company	(G) Plasticizer	(G) Aliphatic carboxylic acid ester
P-04-0271	01/21/04	04/19/04	Dow Corning Corporation	(S) Mold release for aluminium die casting	(G) Alkyl, 2-phenylpropylfunctional siloxane
P-04-0272	01/21/04	04/19/04	Teknor Apex Company	(G) Intermediate for organic ester manufacture	(G) Aliphatic carboxylic acid
P-04-0273	01/21/04	04/19/04	International Paint, Inc.	(G) Coating component	(G) Polyamine-epoxy adduct
P-04-0274	01/22/04	04/20/04	CBI	(G) Phenolic resin for molding compounds	(G) Substituted p-xylene
P-04-0275	01/23/04	04/21/04	Ameribrom, Inc.	(S) Intermediate for the pharmaceutical, photographic and other fine chemical industries	(S) Oxetane, 3-(bromomethyl)-3-methyl-
P-04-0276	01/23/04	04/21/04	Septon Company of America	(S) Air freshener; water clocking sealant	(G) Isobutene-maleic anhydride copolymer sodium salt
P-04-0277	01/26/04	04/24/04	CBI	(G) Refinery unit feed c15-c30	(S) Extracts (petroleum), light paraffinic distillate solvent, hydrotreated, arom. hydrocarbon-rich
P-04-0278	01/26/04	04/24/04	CBI	(G) Refinery unit feed c20-c50	(S) Extracts (petroleum), heavy paraffinic distillate solvent, hydrotreated, arom. hydrocarbon-rich
P-04-0279	01/26/04	04/24/04	Houghton International, Inc.	(S) Lubricant additive	(G) Alkoxyated amine carboxylate salt
P-04-0280	01/26/04	04/24/04	Houghton International, Inc.	(S) Lubricant additive	(G) Alkoxyated amine carboxylate salt
P-04-0281	01/26/04	04/24/04	Houghton International, Inc.	(S) Lubricant additive	(G) Alkali carboxylate salt
P-04-0282	01/26/04	04/24/04	Houghton International, Inc.	(S) Lubricant additive	(G) Alkali carboxylate salt
P-04-0283	01/27/04	04/25/04	Henkel Loctite Corporation	(S) A component in industrial adhesive/sealant formulations	(S) Siloxanes and silicones, di-me,[[dimethoxy[[[(2-methyl-1-oxo-2-propenyl)oxy]methyl]silyl]oxy]-terminated
P-04-0284	01/27/04	04/25/04	CBI	(G) Plastics additive, open, non-dispersive use	(G) Polyether modified polydimethylsiloxane
P-04-0285	01/27/04	04/25/04	Ashland Inc., Environmental Health and Safety	(G) Adhesive, coating, ink	(G) Multifunctional acrylate oligomer resin
P-04-0286	01/27/04	04/25/04	CBI	(G) An open non-dispersive use	(G) Modified alkyd resin
P-04-0287	01/28/04	04/26/04	Eastman Kodak Company	(G) Component of an imaging formulation	(S) Phosphonic acid, (4-morpholinylmethylene)bis-, sodium salt
P-04-0288	01/29/04	04/27/04	CIBA Specialty Chemicals Corporation	(S) Exhaust dyeing of polyester fibers	(G) Substituted aromatic azo isoindole
P-04-0289	01/29/04	04/27/04	CBI	(S) Copolymer for automotive and industrial parts	(G) Ethylene - tetrafluoroethylene copolymer
P-04-0290	01/29/04	04/27/04	CBI	(G) Monomer in radiation cured coatings and inks	(G) Acrylate ester
P-04-0291	01/29/04	04/27/04	Forbo Adhesives, LLC	(G) Hot melt polyurethane adhesives	(G) Isocyanate functional polyester urethane polymer
P-04-0292	01/27/04	04/25/04	Ashland Inc., Environmental Health and Safety	(G) Adhesive, coating, ink	(G) Multifunctional acrylate oligomer resin
P-04-0293	01/30/04	04/28/04	Clariant Corporation	(S) Additive in manufacture of wood panels.; solvent in paint formulation	(S) Ethane, 1,1,2,2-tetramethoxy-

## I.—70 PREMANUFACTURE NOTICES RECEIVED FROM: 1/19/04 TO 02/13/04—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P-04-0294	02/02/04	05/01/04	CBI	(S) Crosslinker for polyurethane dispersions; crosslinker for acrylic latexes	(G) Carbodiimide crosslinker, polycarbodiimide crosslinker
P-04-0295	02/02/04	05/01/04	Wacker Chemical Corporation	(S) Crosslinker for adhesives/sealants	(S) 2-propenoic acid, 2-methyl-, (dimethoxymethylsilyl)methyl ester
P-04-0296	02/02/04	05/01/04	Wacker Chemical Corporation	(S) Crosslinker; water scavenger	(S) Carbamic acid, [(trimethoxysilyl)methyl]-, methyl ester
P-04-0297	02/03/04	05/02/04	Bp Amoco Chemical Company	(G) Anti-corrosion and lubricity additive	(G) Fatty amide derivative
P-04-0298	02/03/04	05/02/04	CIBA Specialty Chemicals Corporation	(S) High molecular weight dispersant for pigment deflocculation in industrial paints	(G) Acrylic block-copolymer
P-04-0299	02/03/04	05/02/04	CBI	(G) A film and adhesive for electronic materials.	(G) Polyimide
P-04-0300	02/03/04	05/02/04	Ashland Inc., Environmental Health and Safety	(G) Adhesive, coating, ink	(G) Multifunctional acrylate oligomer resin
P-04-0301	02/03/04	05/02/04	Ashland Inc., Environmental Health and Safety	(G) Adhesive, coating, ink	(G) Multifunctional acrylate oligomer resin
P-04-0302	02/03/04	05/02/04	Ashland Inc., Environmental Health and Safety	(G) Adhesive, coating, ink	(G) Multifunctional acrylate oligomer resin
P-04-0303	02/03/04	05/02/04	Ashland Inc., Environmental Health and Safety	(G) Adhesive, coating, ink	(G) Multifunctional acrylate oligomer resin
P-04-0304	02/03/04	05/02/04	Ashland Inc., Environmental Health and Safety	(G) Adhesive, coating, ink	(G) Multifunctional acrylate oligomer resin
P-04-0305	02/03/04	05/02/04	Ashland Inc., Environmental Health and Safety	(G) Adhesive, coating, ink	(G) Multifunctional acrylate oligomer resin
P-04-0306	02/03/04	05/02/04	Petroferm Inc.	(S) As a wetting agent in formulated products such as inks, paints and coatings	(G) Superwetter carboxylate
P-04-0307	02/03/04	05/02/04	Petroferm Inc.	(S) As a wetting agent in formulated products such as inks, paints and coatings	(G) Superwetter carboxylate
P-04-0308	02/03/04	05/02/04	Petroferm Inc.	(S) As a wetting agent in formulated products such as inks, paints and coatings	(G) Superwetter carboxylate salt
P-04-0309	02/03/04	05/02/04	Petroferm Inc.	(S) As a wetting agent in formulated products such as inks, paints and coatings	(G) Superwetter phosphate
P-04-0310	02/03/04	05/02/04	Petroferm Inc.	(S) As a wetting agent in formulated products such as inks, paints and coatings	(G) Superwetter phosphate salt
P-04-0311	02/03/04	05/02/04	Petroferm Inc.	(S) As a wetting agent in formulated products such as inks, paints and coatings	(G) Superwetter phosphate salt
P-04-0312	02/04/04	05/03/04	BASF Corporation	(S) Dye transfer inhibitor in powder or liquid detergents	(G) Copolymer of 1-vinylimidazole and 1-vinyl-2-pyrrolidone, modified
P-04-0313	02/04/04	05/03/04	CBI	(G) Glass epoxy laminate	(G) Aminotriazine modified cresol novolac resin
P-04-0314	02/04/04	05/03/04	CBI	(G) Petroleum additive	(G) Salts produced from contacting the dialkyl amide of polyethylene polyamines with (thioalkyl) phosphites.
P-04-0315	02/05/04	05/04/04	Cardolite Corporation	(S) Epoxy curing agent	(G) Amine functional epoxy curing agent
P-04-0316	02/06/04	05/05/04	CBI	(G) Dispersant	(G) Polyisobutenylsuccinic acid, metal salt
P-04-0317	02/09/04	05/08/04	Wacker Chemical Corporation	(S) Crosslinker for silane-terminated polymers	(S) Cyclohexanamine, n-[(triethoxysilyl)methyl]-
P-04-0318	02/09/04	05/08/04	CBI	(S) Intermediate for making urethane polymer	(G) Polyether polyol

## I.—70 PREMANUFACTURE NOTICES RECEIVED FROM: 1/19/04 TO 02/13/04—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P-04-0319	02/06/04	05/05/04	Transmare Houston Inc.	(S) Carrier for herbicides and pesticides; paint and ink formulations; indoor heating oil; solvent blend for cleaning	(S) Distillates (fischer-tropsch), hydroisomerized middle, C <sub>10-13</sub> -branched alkane fraction
P-04-0320	02/10/04	05/09/04	Meadwestvaco Corporation - Specialty Chemicals Division	(S) Asphalt emulsifier salt	(G) Aliphatic n-substituted carboxylic acid amide, hydrochloride
P-04-0321	02/10/04	05/09/04	Sumitomo Corporation of America - Houston Office	(S) Adhesion promoter for polypropylene	(S) 1-propene, polymer with ethene, chlorinated, maleated
P-04-0322	02/10/04	05/09/04	AOC L.L.C.	(S) Polyester component for gelcoat resin for spray up of fiberglass reinforced plastic parts	(S) 1,3-benzenedicarboxylic acid, polymer with 2,2-dimethyl-1,3-propanediol, 2,5-furandione, 2,2'-oxy[ethanol] and 1,2-propanediol
P-04-0323	02/10/04	05/09/04	Ashland Inc., Environmental Health and Safety	(G) Adhesive, coating, ink	(G) Multifunctional acrylate oligomer resin
P-04-0324	02/10/04	05/09/04	Ashland Inc., Environmental Health and Safety	(G) Adhesive, coating, ink	(G) Multifunctional acrylate oligomer resin
P-04-0325	02/10/04	05/09/04	Ashland Inc., Environmental Health and Safety	(G) Adhesive, coating, ink	(G) Multifunctional acrylate oligomer resin
P-04-0326	02/10/04	05/09/04	Ashland Inc., Environmental Health and Safety	(G) Adhesive, coating, ink	(G) Multifunctional acrylate oligomer resin
P-04-0327	02/10/04	05/09/04	Ashland Inc., Environmental Health and Safety	(G) Adhesive, coating, ink	(G) Multifunctional acrylate oligomer resin
P-04-0328	02/10/04	05/09/04	Ashland Inc., Environmental Health and Safety	(G) Adhesive, coating, ink	(G) Multifunctional acrylate oligomer resin
P-04-0329	02/11/04	05/10/04	CIBA Specialty Chemicals Corporation	(S) High molecular weight dispersant for pigment deflocculation in industrial paints	(G) Polymeric acrylic dispersant
P-04-0330	02/11/04	05/10/04	CIBA Specialty Chemicals Corporation	(S) High molecular weight dispersant for pigment deflocculation in industrial paints	(G) Polymeric acrylic dispersant
P-04-0331	02/11/04	05/10/04	CBI	(S) Disperse dyestuff for finishing polyester fibers and fabrics	(G) Substituted phenoxy anthraquinone
P-04-0332	02/12/04	05/11/04	PPG Industries, Inc.	(G) Component of a coating with an open use	(G) Epoxy functional styrenated methacrylate polymer
P-04-0333	02/12/04	05/11/04	CBI	(G) Open, non-dispersive (resin)	(G) Aliphatic polyisocyanate
P-04-0334	02/12/04	05/11/04	CBI	(S) Binders for pressure-sensitive adhesives and self-adhesives	(G) Acrylic co-polymer
P-04-0335	02/12/04	05/11/04	CBI	(G) Rheology additive	(G) Quaternary ammonium compound
P-04-0336	02/12/04	05/11/04	CBI	(S) Crosslinker for polymer dispersions in the application adhesives and coating and binder for non-woven systems	(G) Oligocarbodiimide
P-04-0337	02/13/04	05/12/04	Symrise Inc.	(G) Additive for industrial and consumer products dispersive use	(S) 5-hexylidihydro-4-methylfuran-2(3h)-one

In Table II of this unit, EPA provides the following information (to the extent that such information is not claimed as

CBI) on the Notices of Commencement to manufacture received:

## II.—37 NOTICES OF COMMENCEMENT FROM: 1/19/04 TO 02/13/04

Case No.	Received Date	Commencement Notice End Date	Chemical
P-00-0870	02/04/04	01/15/04	(G) Acrylate terpolymer
P-00-1021	02/06/04	01/02/04	(G) Amine functional epoxy curing agent and accelerator
P-00-1195	02/10/04	01/15/04	(S) 9-(2-(ethoxycarbonyl)phenyl)-3,6-bis(ethylamino)-2,7-dimethylxanthylum ethyl sulfate

## II.—37 NOTICES OF COMMENCEMENT FROM: 1/19/04 TO 02/13/04—Continued

Case No.	Received Date	Commencement Notice End Date	Chemical
P-02-0758	01/22/04	12/19/03	(S) Tricyclodecanodimethanol, polymer with alpha-hydroxy-omega-hydroxypoly (oxy-1,4-butanediyl) and 5-isocyanato-] (isocyanatomethyl)-1,3,3-trimethylcyclohexano, 2-hydroxyethyl methacrylate-blocked
P-03-0028	01/21/04	12/16/03	(G) Alkene acrylate copolymer
P-03-0254	02/09/04	01/29/04	(G) Triazine derivative
P-03-0499	01/27/04	01/05/04	(G) Isocyanate terminated urethane polymer
P-03-0558	01/29/04	01/20/04	(G) Polyurethane
P-03-0608	01/27/04	11/21/03	(G) N,n-alkanediis-n-fatty acid amide
P-03-0616	01/21/04	01/13/04	(G) Unsaturated alkyl grignard reagent
P-03-0619	02/10/04	01/12/04	(G) Fatty acid, reaction product with alkylamino alcohol, propoxylated
P-03-0645	02/06/04	01/07/04	(G) Polyether polyol
P-03-0674	02/10/04	01/17/04	(G) Polyolefin ester, amine salt
P-03-0739	01/20/04	12/16/03	(G) Epoxy functional silsesquioxane
P-03-0773	02/03/04	01/14/04	(G) Zincated resin system
P-03-0798	01/21/04	12/12/03	(G) Pentaerythritol, mixed esters with straight and branched fatty acids
P-03-0800	01/21/04	12/16/03	(G) Pentaerythritol, mixed esters with straight chain and branched fatty acids
P-03-0815	01/28/04	12/29/03	(G) Sulfurized vegetable oil
P-03-0816	01/28/04	12/29/03	(G) Sulfurized vegetable oil
P-03-0828	02/06/04	01/22/04	(G) Unsaturated urethane acrylate resin
P-03-0835	01/29/04	01/12/04	(S) 1-butene, polymer with ethene and 1-propene, chloro- and tetrahydro-2,5-dioxo-3-furanyl-terminated
P-03-0839	01/28/04	01/21/04	(G) Mono-halo substituted alkene
P-03-0851	02/09/04	01/23/04	(G) Blocked urethane polymer
P-04-0029	01/27/04	01/15/04	(G) Cyclic diamine bisamide with monocarboxylic fatty acids.
P-04-0039	01/27/04	01/20/04	(G) Hydroxycycloalkanone
P-04-0066	02/03/04	01/27/04	(G) Polybutadiene acrylate
P-96-0049	01/29/04	01/22/04	(G) Styrene acrylic emulsion
P-96-0658	01/21/04	01/05/04	(G) Tri-substituted acetanilide
P-97-0720	01/27/04	01/16/04	(G) Ethanone, 1-(3-pyridinyl)-, n-substituted
P-03-0061	02/11/04	01/30/04	(G) Aromatic epoxy ether
P-03-0486	02/12/04	02/09/04	(G) Sodium salt of a sulfonated triazine derivative
P-03-0647	02/11/04	12/08/03	(G) Amine salt of diglycidyl ether of bisphenol a, bisphenol a, fatty acids, alkenoic acid and alkenylbenzene.
P-03-0735	02/11/04	02/02/04	(G) Cationic polyvinyl alcohol
P-03-0749	02/11/04	01/28/04	(G) Polyacrylic resin
P-03-0817	02/12/04	01/20/04	(G) Sulfurized vegetable oil
P-03-0818	02/12/04	01/20/04	(G) Sulfurized vegetable oil
P-03-0819	02/12/04	01/20/04	(G) Sulfurized vegetable oil

**List of Subjects**

Environmental protection, Chemicals, Premanufacturer notices.

Dated: February 26, 2004.

**Anthony Cheatham,**

*Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.*

[FR Doc. 04-4986 Filed 3-4-04; 8:45 am]

**BILLING CODE 6560-50-S**

LaRouche's Committee for a New Bretton Woods—Statement of Reasons (LRA 565).

Draft Advisory Opinion 2004-03: Dooley for the Valley by counsel, Stephen J. Kaufman and Joseph M. Birkenstock.

Draft Advisory Opinion 2004-04: Air Transport Association of America by counsel, John C. Keeney, Jr.

Future meeting dates.

Routine administrative matters.

**FOR FURTHER INFORMATION CONTACT:** Robert Biersack, Acting Press Officer, telephone: (202) 694-1220.

**Mary W. Dove,**

*Secretary of the Commission.*

[FR Doc. 04-5187 Filed 3-3-04; 2:31 pm]

**BILLING CODE 6715-01-M**

**FEDERAL ELECTION COMMISSION****Sunshine Act Notices; Meeting**

\* \* \* \* \*

**DATE AND TIME:** Thursday, March 11, 2004, at 10 a.m.

**PLACE:** 999 E Street, NW., Washington, DC (ninth floor).

**STATUS:** This meeting will be open to the public.

**ITEMS TO BE DISCUSSED:**

Correction and approval of minutes.

**FEDERAL HOUSING FINANCE BOARD****Sunshine Act Meeting Notice; Announcing a Closed Meeting of the Board of Directors**

**TIME AND DATE:** The meeting of the Board of Directors is scheduled to begin at 10 a.m. on Wednesday, March 10, 2004.

**PLACE:** Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

**STATUS:** The entire meeting will be closed to the public.

**MATTERS TO BE CONSIDERED:**

Briefing on various disclosure initiatives and their role in supervision.

Periodic update of examination program development and supervisory findings.

**FOR FURTHER INFORMATION CONTACT:** Mary Gottlieb, Paralegal Specialist, Office of General Counsel, by telephone at 202/408-2826 or by electronic mail at [gottlieb@fhfb.gov](mailto:gottlieb@fhfb.gov).

Dated: March 3, 2004.



By the Federal Housing Finance Board.  
**John Harry Jorgenson,**  
*General Counsel.*  
 [FR Doc. 04-5190 Filed 3-3-04; 2:53 pm]  
 BILLING CODE 6725-01-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

[30Day-22-04]

#### Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498-1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202) 395-6974. Written comments should be received within 30 days of this notice.

*Proposed Project:* Pilot Study for the National Survey of the Mining Population—New—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Surveillance of occupational injuries, illnesses, and exposures has been an integral part of the work of the National Institute for Occupational Safety and Health (NIOSH) since its creation by the Occupational Safety and Health Act in 1970. To improve its surveillance capability related to the occupational risks in mining, NIOSH plans to conduct a national survey of mines and mine employees. No national surveys have specifically targeted the mining labor force since the 1986 Mining Industry Population Survey (MIPS). The mining industry has experienced many changes in the last 17 years; consequently, the MIPS data are no longer representative of the current mining industry labor force.

The proposed survey will be based upon a probability sample of mining operations and their employees. The major objectives of the survey will be: (1) To collect basic information about the mining operation; (2) to establish the demographic and occupational characteristics of mine operator employees within each major mining sector (coal, metal, nonmetal, stone, and sand and gravel); and (3) to determine the number and occupational characteristics of independent contractor employees within mines. The sampled mining operations will provide all survey data; individual operator and independent contractor employees will not be directly surveyed. As a result of this survey, surveillance researchers and government agencies such as the Mine

Safety and Health Administration (MSHA) will be able to identify groups of miners with a disproportionately high risk of injury or illness. By capturing demographic (e.g., age, gender, race/ethnicity, education level) and occupational characteristics (e.g., job, title, work location, experience in this job title, total mining experience) of the mining workforce, these data will be of use in the customization of interventions such as safety training programs.

This request is for OMB approval of a Pilot Study to evaluate the effectiveness of the survey recruitment materials, questionnaires, and procedures in the acquisition of complete and high quality data from a sample of mining operations. Data captured in the Pilot Study will guide improvements to optimize the performance of the various components of the full-scale national survey. Approximately 40 randomly selected mining operations spanning the five major commodities will be chosen for the Pilot Study. A survey packet will be sent to each sampled mining operation. It is expected that approximately 30 mining operations will be eligible to participate in and will respond to the Pilot Study. A portion of the survey respondents and all non-respondents will be asked a short number of debriefing questions by telephone. The estimated annualized burden for this data collection is 52 hours.

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Mining Operations Participating in Pilot Study .....	30	1	90/60
Mining Operations Responding to Debriefing Questions .....	25	1	15/60

Dated: March 1, 2004.

**Alvin Hall,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 04-5113 Filed 3-4-04; 8:45 am]

BILLING CODE 4163-18-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

#### National Center for Health Statistics (NCHS), Classifications and Public Health Data Standards, Announces the Following Meeting

*Name:* ICD-9-CM Coordination and Maintenance Committee meeting.

*Times and Dates:* 9 a.m.-4 p.m., April 1-2, 2004.

*Place:* Centers for Medicare and Medicaid Services (CMS) Auditorium, 7500 Security Boulevard, Baltimore, Maryland.

*Status:* Open to the public.

*Purpose:* The ICD-9-CM Coordination and Maintenance (C&M) Committee will hold its first meeting of 2004 calendar year cycle on Thursday and Friday April 1-2, 2004. The C&M meeting is a public forum for the presentation of proposed modifications to the International Classification of Diseases, Ninth-Revision, Clinical Modification.

*Matters to Be Discussed:* Agenda items include: Retroperitoneal abscess, Worn out joint prosthesis, Partial and complete edentulism, Effects of Red Tides, Erythromelalgia, Phlebitis and thrombophlebitis, Stroke/CVA, Overweight, Symptomatic torsion dystonia, Egg donor, Left atrial appendage filter system, Carotid artery stents, Laparoscopic total hip replacement, Palatal implant for

obstructive sleep apnea, Internal limb lengthening device, Vasopressor agents, Computer assisted surgery, Vertebroplasty and kyphoplasty, Addenda, and ICD-10-Procedure classification system (ICD-10-PCS) update.

**FOR FURTHER INFORMATION CONTACT:**

Amy Blum, Medical Classification Specialist, Classifications and Public Health Data Standards Staff, NCHS, 3311 Toledo Road, Room 2402, Hyattsville, Maryland 20782, telephone 301-458-4106 (diagnosis), Amy Gruber, Health Insurance Specialist, Division of Acute Care, CMS, 7500 Security Blvd., Room C4-07-07, Baltimore, Maryland 21244, telephone 410-786-1542 (procedures).

**Note:** In the interest of security, (CMS) has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Because of increased security requirements, those who wish to attend a specific ICD-9-CM C&M meeting in the CMS auditorium must submit their name and organization for addition to the meeting visitor list. Those wishing to attend the April 1-2, 2004 meeting must submit their name and organization by March 29, 2004 for inclusion on the visitor list. This visitor list will be maintained at the front desk of the CMS building and used by the guards to admit visitors to the meeting. Those who attended previous ICD-9-CM C&M meetings will no longer be automatically added to the visitor list. You must request inclusion of your name prior to each meeting you attend.

Send your name and organization to one of the following by March 29, 2004 in order to attend the April 1-2, 2004 meeting: Pat Brooks, [pbrooks1@cms.hhs.gov](mailto:pbrooks1@cms.hhs.gov), 410-786-5318; Ann Fagan, [afagan@cms.hhs.gov](mailto:afagan@cms.hhs.gov), 410-786-5662; Amy Gruber, [agruber@cms.hhs.gov](mailto:agruber@cms.hhs.gov), 410-786-1542.

**Note:** This is a public meeting. However, because of fire code requirements, should the number of attendants meet the capacity of the room, the meeting will be closed.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: March 1, 2004.

**Alvin Hall,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 04-4943 Filed 3-4-04; 8:45 am]

**BILLING CODE 4160-18-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**ACTION:** Publication of closed meeting summary of the Advisory Board on Radiation and Worker Health (ABRWH), National Institute for Occupational Safety and Health (NIOSH), CDC.

**Committee Purpose:** This board is charged with (a) providing advice to the Secretary, Department of Health and Human Services (HHS), on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this Program; and (c) upon request by the Secretary, HHS, advise the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class.

**Background:** The ABRWH met on February 6, 2004, in closed session to discuss the Proposed Independent Government Cost Estimates (IGCE) for proposed tasks of a task order contract. This contract, once awarded, will provide technical support to assist the Board in fulfilling its statutory duty to advise the Secretary, HHS, regarding the dose reconstruction efforts under the Energy Employees Occupational Illness Compensation Program Act. A Determination to Close the meeting was approved and published, as required by the Federal Advisory Committee Act.

**Summary of the Meeting:** Attendance was as follows: Board Members: Paul L. Ziemer, Ph.D., Chair; Henry A. Anderson, M.D., Member; Antonio Andrade, Ph.D., Member; Roy L. DeHart, M.D., M.P.H., Member; Richard L. Espinosa, Member; Michael H. Gibson, Member; Mark A. Griffon, Member; James M. Melius, M.D., Dr.P.H., Member; Wanda I. Munn, Member; Charles L. Owens, Member; Robert W. Presley, Member; Genevieve S. Roessler, Ph.D., Member.

**NIOSH Staff:** Martha DiMuzio, Cori Homer, Liz Homoki Titus, David Naimon, and Jim Neton; Larry J. Elliott, Executive Secretary. Ray S. Green, Court Recorder

**Summary/Minutes:** Dr. Ziemer called to order the ABRWH in closed session on February 6, 2004, at 1:45 p.m. The purpose of the closed meeting was to discuss the Independent Government Cost Estimate for proposed tasks of a task order contract that provides technical support to the ABRWH review of completed dose reconstructions.

**General topics discussed:** Closed session procedures and

Independent Government Cost Estimates for task proposals of the task order contract. Dr. Paul Ziemer adjourned the closed session of the ABRWH meeting at 3 p.m. with no further business being conducted by the ABRWH.

**FOR FURTHER INFORMATION CONTACT:**

Larry Elliott, Executive Secretary, ABRWH, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226, telephone (513) 533-6825, fax (513) 533-6826.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: February 27, 2004.

**Alvin Hall,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 04-4944 Filed 3-4-04; 8:45 am]

**BILLING CODE 4163-19-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare and Medicaid Services

[Document Identifier: CMS-724]

#### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Centers for Medicare and Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed

collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

*Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* The Medicare/Medicaid Psychiatric Hospital Survey Data Contained in 42 CFR and supporting regulations in 42 CFR 482.60, 482.61, and 482.62.; *Form No.:* CMS-724 (OMB# 0938-0378); *Use:* The collection of this data will assure an accurate data base for program planning and evaluation, and survey team composition for surveys of psychiatric hospitals. All freestanding psychiatric hospitals surveyed will be required to respond.; *Frequency:* Annually; *Affected Public:* Federal Government, Business or other for-profit, Not-for-profit institutions, and State, local and tribal government; *Number of Respondents:* 200; *Total Annual Responses:* 200; *Total Annual Hours:* 100.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web Site address at <http://cms.hhs.gov/regulations/prd/default.asp>, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to [Paperwork@hcf.gov](mailto:Paperwork@hcf.gov), or call the Reports Clearance Office on (410) 786-1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances, Attention: Melissa Musotto, Room C5-14-03, 7500 Security Boulevard, Baltimore, Maryland 21244-1850.

Dated: February 27, 2004.

**John P. Burke, III,**

*Paperwork Reduction Act Team Leader,  
Office of Strategic Operations and Strategic  
Affairs, Division of Regulations Development  
and Issuances.*

[FR Doc. 04-4998 Filed 3-4-04; 8:45 am]

**BILLING CODE 4120-03-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

[CMS-2200-N2]

#### Medicare Program; Establishment of the State Pharmaceutical Assistance Transition Commission

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Notice.

**SUMMARY:** This notice announces the establishment of the State Pharmaceutical Assistance Transition Commission (the Commission) that will develop a proposal for addressing the unique transitional issues facing State Pharmaceutical Assistance Programs (SPAP) and SPAP participants due to the implementation of the voluntary prescription drug benefit program under part D of title XVIII of the Social Security Act.

This notice also announces the signing by the Secretary on March 1, 2004 of the charter establishing the Commission. The charter will terminate 30 days after the date of the submission of the report to Congress, but no later than January 31, 2005.

#### FOR FURTHER INFORMATION CONTACT:

Marge Watchorn, Health Insurance Specialist, Center for Medicaid and State Operations, Centers for Medicare & Medicaid Services, Mail stop S2-01-16, Baltimore, MD 21244-1850, (410) 786-4361.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Section 106 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108-173), enacted on December 8, 2003, mandates that the Secretary of the Department of Health and Human Services (the Secretary) establish a State Pharmaceutical Assistance Transition Commission (the Commission) by March 1, 2004. The Commission will develop a proposal for addressing the unique transitional issues facing State Pharmaceutical Assistance Programs (SPAP) and SPAP participants due to the implementation of the voluntary

prescription drug benefit program under part D of title XVIII of the Social Security Act (the Act), as added by section 101 of the MMA.

The Commission, chartered under section 106 of the MMA, Pub. L. 108-173, is governed by the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. Appendix 2, which sets forth standards for the formation and use of advisory committees.

The composition of the Commission must include the following:

- A representative of each Governor of each State that the Secretary identifies as operating, on a statewide basis, an SPAP that provides for eligibility and benefits that are comparable to, or more generous than, the low-income assistance and eligibility and benefits offered under section 1860D-14 of the Act.
- Representatives from other States that the Secretary identifies have in operation other SPAPs, as appointed by the Secretary.
- Representatives of organizations that have an inherent interest in program participants or the program itself, as appointed by the Secretary.
- Representatives of Medicare Advantage organizations, pharmaceutical benefit managers, and other private health insurance plans, as appointed by the Secretary.
- The Secretary (or the Secretary's designee) and any other members that the Secretary may specify. The Secretary will designate a member to serve as Chair of the Commission and the Commission will meet at the call of the Chair.

##### II. Provisions of the Notice

This notice announces the signing of the State Pharmaceutical Assistance Transition Commission charter by the Secretary on March 1, 2004. The charter will terminate 30 days after the date of the submission of the report to Congress, but no later than January 31, 2005.

##### III. Report to Congress

By no later than January 1, 2005, the Commission shall submit to the President and Congress a report that contains a detailed proposal (including specific legislative or administrative recommendations, if any) and other recommendations as the Commission deems appropriate.

##### IV. Copies of the Charter

You may obtain a copy of the charter for the State Pharmaceutical Assistance Transition Commission by submitting a request to Marge Watchorn, Health Insurance Specialist, Center for

Medicaid and State Operations, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Mail stop S2-01-16, Baltimore, MD 21244-1850. (410) 786-4361, or E-Mail the request to [mwatchorn@cms.hhs.gov](mailto:mwatchorn@cms.hhs.gov).

**Authority:** Section 106 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: February 26, 2004.

**Dennis G. Smith,**

*Acting Administrator, Centers for Medicare & Medicaid Services.*

[FR Doc. 04-4907 Filed 3-1-04; 4:54 pm]

BILLING CODE 4120-01-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. 2004N-0086]

#### Diabetes: Targeting Safe and Effective Prevention and Treatment; Public Meeting

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of public meeting.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the following public meeting: FDA/National Institutes of Health (NIH) Joint Symposium on Diabetes: Targeting Safe and Effective Prevention and Treatment. The purpose of the public meeting is to define the current state of the prevention and management of diabetes and to identify and discuss therapeutic gaps and hurdles to safe and effective prevention and treatment of type 1 and type 2 diabetes mellitus. The public meeting is intended to provide assistance to FDA, clinical and basic scientists, and the interested pharmaceutical industry in their efforts to reduce the burden of diabetes and improve the health of all people with diabetes.

**DATES:** The public meeting will be held on May 13, 2004, from 8:30 a.m. to 4:30 p.m. and on May 14, 2004, from 8 a.m. to 12 noon. Registration is required to attend the public meeting and must be received by April 30, 2004, at 3 p.m.

**ADDRESSES:** The public meeting will be held at the Natcher Conference Center, Bldg. 45, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD. Important information about transportation and directions to the NIH campus, parking, and security procedures is available on the Internet

at <http://www.nih.gov/about/visitor/index.htm>.

Visitors must show two forms of identification, one of which must be a government-issued photo identification such as a Federal employee badge, driver's license, passport, green card, etc. If you are planning to drive to and park on the NIH campus, you must enter at the South Dr. entrance of the campus which is located on Wisconsin Ave. (the Medical Center Metro entrance), and allow extra time for vehicle inspection. Detailed information about security procedures is located at <http://www.nih.gov/about/visitorsecurity.htm>. Due to the limited available parking, visitors are encouraged to use public transportation.

#### FOR FURTHER INFORMATION CONTACT:

*For General Information:* James Cross, Center for Drug Evaluation and Research, Food and Drug Administration (HFD-020), 5515 Security Lane, Rockville, MD 20852, 301-443-5355, FAX: 301-480-8329, e-mail:

[james.cross@fda.hhs.gov](mailto:james.cross@fda.hhs.gov), or Sanford Garfield, National Institute for Diabetes and Digestive and Kidney Diseases, National Institutes of Health, 6707 Democracy Blvd., rm. 685, Bethesda, MD 20892-5460, e-mail: [garfields@ep.niddk.nih.gov](mailto:garfields@ep.niddk.nih.gov).

*For Registration Information:* Iain MacKenzie, The Hill Group, 6903 Rockledge Dr., suite 540, Bethesda, MD 20817, 301-897-2789, FAX 301-897-9587, e-mail: [imackenzie@thehillgroup.com](mailto:imackenzie@thehillgroup.com)

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Diabetes mellitus constitutes a significant and growing threat to the U.S. public health, largely through its comorbid clinical features and long-term complications, including blindness, kidney disease, amputations, and cardiovascular disease. On January 31, 2003, FDA launched an initiative to improve the development and availability of innovative medical products by creating clearer guidance on priority therapeutic areas, including diabetes. Information about the initiative is available on the Internet at <http://www.fda.gov/bbs/topics/news/2003/beyond2002/report.html>.

As outlined in the initiative, FDA intends to develop regulatory guidance on diabetes in collaboration with scientists and relevant parties through public meetings such as the FDA/NIH Joint Symposium on Diabetes: Targeting Safe and Effective Prevention and Treatment. This public meeting also relates to a recent initiative of the

National Institute for Diabetes and Digestive and Kidney Diseases (NIDDKD) entitled "Bench to Bedside, Research on Type 1 Diabetes and Its Complications," which aims to translate molecular understanding of type 1 diabetes into novel therapies.

The public meeting will provide a forum for discussion of diabetes-related topics, including the following topics:

- Important disease outcomes that are or should be targeted in the development of drugs, devices, and cell-based therapies for type 1 and/or type 2 diabetes;

- Issues surrounding the use of surrogate or intermediate measures of clinical effect in assessments of novel therapeutic approaches to prevention and treatment; and

- Clinical, scientific, and regulatory issues surrounding development of new medical technologies for the treatment of metabolic syndrome and for the prevention of type 2 diabetes.

Participants include FDA and NIH staff, academic experts from the United States and abroad, members of trade associations representing commercial industry, and representatives of the major diabetes patient advocacy groups.

FDA and NIH are currently developing a web page where interested persons can register to attend the public meeting, submit comments, and to obtain related information. Information about the public meeting will be posted at <http://www.niddk.nih.gov/fund/other/conferences.htm>.

##### II. Registration

If you would like to attend the public meeting, you must register with Iain MacKenzie (see **FOR FURTHER INFORMATION CONTACT**) by April 30, 2004, at 3 p.m. by providing your name, title, organizational affiliation, address, telephone, fax number (optional), and e-mail address (optional). Registration will be conducted on a first-come, first-served basis, and seating will be limited. To expedite processing, this registration information may also be faxed or e-mailed to Iain MacKenzie. If you need special accommodations due to a disability, please contact Iain MacKenzie at least 7 days in advance.

The public meeting will include morning and afternoon sessions during which a discussion of diabetes and related issues associated with diabetes prevention and treatment will be presented. FDA and NIH are asking experts to provide presentations on specific issues, with discussion time following each presentation.

### III. Comments

The administrative record of this public meeting will remain open for 30 days after the public meeting. Interested persons may submit to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, written or electronic comments by June 11, 2004. You may also send comments to the Division of Dockets Management via e-mail to [FDADockets@oc.fda.gov](mailto:FDADockets@oc.fda.gov). Submit two paper copies of comments, identified with the docket number found in brackets in the heading of this document. Individuals may submit one paper copy. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday. Comments may be placed on the Internet and, if so, will be available for public viewing.

### IV. Meeting Notes

You may request a copy of the notes of the public meeting in writing from the Freedom of Information Office (HFI-35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A-16, Rockville, MD 20857, approximately 15 working days after the public meeting, at a cost of 10 cents per page. You may examine the notes of the public meeting after June 11, 2004, at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 27, 2004.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 04-4888 Filed 3-4-04; 8:45 am]

BILLING CODE 4160-01-S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### General and Plastic Surgery Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

**Name of Committee:** General and Plastic Surgery Devices Panel of the Medical Devices Advisory Committee.

**General Function of the Committee:** To provide advice and recommendations to the agency on FDA's regulatory issues.

**Date and Time:** The meeting will be held on March 25, 2004, from 8 a.m. to 5 p.m.

**Location:** Hilton Washington, DC North/Gaithersburg, Ballroom Salons A, B, C, and D, 620 Perry Pkwy., Gaithersburg, MD.

**Contact Person:** David Krause, Center for Devices and Radiological Health (HFZ-410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301-594-3090, ext. 141, or FDA Advisory Committee Information Line, 1-800-741-8138 (301-443-0572 in the Washington, DC area), code 3014512519. Please call the Information Line or access the Internet address of <http://www.fda.gov/cdrh/panelmtg.html> for up-to-date information on this meeting.

**Agenda:** The committee will discuss, make recommendations, and vote on a premarket approval application (PMA) for an injectable device intended for use in the correction of lipoatrophy of the face in human immunodeficiency virus (HIV) positive patients. Background information for this PMA, including the agenda and questions for the committee, will be available to the public 1 business day before the meeting on the Internet at <http://www.fda.gov/cdrh/panelmtg.html>. The material for this meeting will be posted on March 24, 2004.

**Procedure:** Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by March 15, 2004. On March 25, 2004, oral presentations from the public will be scheduled for approximately 1 hour at the beginning of committee deliberations and for approximately 1 hour near the end of the committee deliberations. Time allotted for oral public presentations may be limited. Those desiring to make formal oral presentations should notify the contact person before March 15, 2004, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Shirley

Meeks, Conference Management Staff, at 301-594-1283, ext. 105, at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: March 1, 2004.

**Peter J. Pitts,**

*Associate Commissioner for External Relations.*

[FR Doc. 04-4983 Filed 3-4-04; 8:45 am]

BILLING CODE 4160-01-S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. 2000D-1350]

#### Draft Guidance for Industry on Labeling for Combined Oral Contraceptives; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled "Labeling for Combined Oral Contraceptives." The draft guidance contains recommended labeling for combined oral contraceptives. This is the second draft of a guidance being issued on this topic.

**DATES:** Submit written or electronic comments on the draft guidance by May 4, 2004. General comments on agency guidance documents are welcome at any time.

**ADDRESSES:** Submit written requests for single copies of the draft guidance to the Division of Drug Information (HFD-240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to <http://www.fda.gov/dockets/ecomments>. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

#### FOR FURTHER INFORMATION CONTACT:

Margaret Kober, Center for Drug Evaluation and Research (HFD-580), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-4260.

#### SUPPLEMENTARY INFORMATION:

## I. Background

FDA is announcing the availability of a draft guidance for industry entitled "Labeling for Combined Oral Contraceptives." The draft guidance describes the recommended labeling for health care providers and patient instructions for use for new drug applications (NDAs) and abbreviated new drug applications (ANDAs) for combined oral contraceptives (those that contain estrogen and progestin). This draft guidance incorporates changes in response to public comments on the previous draft guidance that was published in the **Federal Register** on July 10, 2000 (65 FR 42387). Because of the many changes resulting from comments on the 2000 draft, this guidance is being issued in draft again to allow for additional public input. Once comments on this second draft have been received and considered, the agency will finalize the guidance.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on labeling for combined oral contraceptives. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

## II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on the draft guidance. Two copies of mailed comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

## III. Electronic Access

Persons with access to the Internet may obtain the document at either <http://www.fda.gov/cder/guidance/index.htm> or <http://www.fda.gov/ohrms/dockets/default.htm>.

Dated: February 25, 2004.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 04-4886 Filed 3-4-04; 8:45 am]

**BILLING CODE 4160-01-S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. 2003D-0137]

#### Guidance for Industry and Food and Drug Administration Staff; Surgical Masks—Premarket Notification Submissions; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled "Surgical Masks—Premarket Notification [510(k)] Submissions." This guidance is intended to assist industry in preparing premarket notification submissions for surgical masks.

**DATES:** Submit written or electronic comments on this guidance at any time. General comments on agency guidance documents are welcome at any time.

**ADDRESSES:** Submit written requests for single copies on a 3.5" diskette of the guidance document entitled "Surgical Masks—Premarket Notification Submissions" to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ-220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send one self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301-443-8818. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit written comments concerning this guidance to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to <http://www.fda.gov/dockets/ecomments>. Identify comments with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Chiu S. Lin, Center for Devices and Radiological Health (HFZ-480), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301-443-8913.

#### **SUPPLEMENTARY INFORMATION:**

### I. Background

In the **Federal Register** of May 15, 2003 (68 FR 26308), FDA announced the availability of a draft of this guidance document and invited interested persons to comment by June 16, 2003. FDA received four comments. The

comments suggested various clarifications to the scope of the devices addressed by the guidance and to testing methods cited in the guidance, and other minor points. FDA revised the guidance to clarify these points.

## II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on premarket notification submissions for surgical masks. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

## III. Paperwork Reduction Act of 1995

This guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501-3520). The collections of information addressed in the guidance document have been approved by OMB in accordance with the PRA under the regulations governing premarket notification submissions (21 CFR part 807, subpart E, OMB control number 0910-0120). The labeling provisions addressed in the guidance have been approved by OMB under OMB control number 0910-0485.

## IV. Electronic Access

To receive "Surgical Masks—Premarket Notification Submissions" by fax machine, call the Center for Devices and Radiological Health (CDRH) Facts-On-Demand system at 800-899-0381, or 301-827-0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt, press 1 to order a document. Enter the document number (094) followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so by using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturer's assistance, information on video conferencing and electronic submissions, Mammography Matters,

and other device-oriented information. The CDRH Web site may be accessed at <http://www.fda.gov/cdrh>. A search capability for all CDRH guidance documents is available at <http://www.fda.gov/cdrh/guidance.html>. Guidance documents are also available on the Division of Dockets Management Internet site at <http://www.fda.gov/ohrms/dockets>.

#### V. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**), written or electronic comments regarding the guidance at any time. Submit a single copy of electronic comments to <http://www.fda.gov/dockets/ecomments>. Submit two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments received may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 25, 2004.

**Beverly Chernaik Rothstein,**

*Acting Deputy Director for Policy and Regulations, Center for Devices and Radiological Health.*

[FR Doc. 04-4982 Filed 3-4-04; 8:45 am]

**BILLING CODE 4160-01-S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Government-Owned Inventions; Availability for Licensing

**AGENCY:** National Institutes of Health, Public Health Service, DHHS.

**ACTION:** Notice.

**SUMMARY:** The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

**ADDRESSES:** Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852-3804; telephone: (301)

496-7057; fax: (301) 402-0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

#### Cloning and Characterization of an Avian Adeno-Associated Virus and Uses Thereof

Ioannis Bossis (NIDCR).

U.S. Provisional Application No. 60/472,066 filed 19 May 2003 (DHHS Reference No. E-105-2003/0-US-01). *Licensing Contact:* Jesse S. Kindra; 301/435-5559; [kindraj@mail.nih.gov](mailto:kindraj@mail.nih.gov).

Currently, adeno-associated virus (AAV) represents the gene therapy vehicle of choice because it has many advantages over current strategies for therapeutic gene insertion. AAV is less pathogenic than other virus types; stably integrates into dividing and non-dividing cells; integrates at a consistent site in the host genome; and shows good specificity towards various cell types for targeted gene delivery.

To date, eight AAV isolates have been isolated and characterized, but new serotypes derived from other animal species may add to the specificity and repertoire of current AAV gene therapy techniques.

This invention describes vectors derived from an avian AAV. These vectors have innate properties related to their origin that may confer them with a unique cellular specificity in targeted human gene therapy. Therefore, vectors derived from this avian AAV are likely to find novel applications for gene therapy in humans and fowl.

This research has been described, in part, in Bossis and Chiorini (2003) *J. Virol.* 12:6799-6810.

#### Activation of Recombinant Diphtheria Toxin Fusion Proteins by Specific Proteases Highly Expressed on the Surface of Tumor Cells

Stephen Leppla, Shi-Hui Liu, Manuel Osorio, and Jennifer Avallone (NIDCR).

DHHS Reference No. E-331-2002/0-US-01 filed 06 May 2003.

*Licensing Contact:* Brenda Hefti; 301/435-4632; [heftib@mail.nih.gov](mailto:heftib@mail.nih.gov).

This invention relates to diphtheria toxin fusion proteins comprising a diphtheria toxin (DT) cell-killing component and a cell-binding component such as granulocyte macrophage colony-stimulating factor (GM-CSF), interleukin 2 (IL-2), or epidermal growth factor (EGF). Receptors for the latter three materials are present on many types of cancer cells; therefore, these fusion proteins bind preferentially to these cancer cells. A key feature is that these toxins are

altered so as to require activation by a cell-surface protease that is overexpressed on many types of cancers. Examples of such proteases include matrix metalloproteinases and urokinase plasminogen activator. Consequently, these novel cytotoxins kill tumors expressing receptors for either GM-CSF, IL-2, or EGF along with the cell-surface protease. Because killing requires the presence of both a receptor and a cancer-cell enriched protease, and few normal tissues contain both, there is less toxicity to normal cells. Thus, a larger amount of the agent may be used for cancer therapy without inducing side effects. In other words, these cytotoxins have a higher therapeutic index than toxins that are targeted to cells using a single strategy.

#### Dominant Negative Deletion Mutants of C-Jun and Their Use in the Prevention and Treatment of Cancer

NH Colburn, Z Dong, PH Brown, MJ Birrer (NCI).

U.S. Patent Application No. 08/213,433 filed 10 Mar 94 (DHHS Reference No. E-240-1993/0-US-01).

*Licensing Contact:* Jesse Kindra; 301/435-5559; [kindraj@mail.nih.gov](mailto:kindraj@mail.nih.gov).

A number of mutants of the c-jun oncogene have been developed, which may be particularly useful in the prevention and treatment of cancer. Numerous studies have shown that tumor promotion is a long-term process that is partially reversible and that requires chronic exposure to a tumor promoter, and that subsequent progression of tumors through invasive and metastatic stages is also a long term process. In recent years, numerous cellular oncogenes have been implicated in the transactivation of genes associated with cellular growth and differentiation. One such cellular oncogene, c-jun, encodes a phosphoprotein that is a component of the dimeric transcriptional activator AP-1 along with c-Fos or other Jun or Fos family proto-oncoproteins. Several genes that may be involved in tumor promotion or progression have been shown to be dependent on AP-1 transactivation, including collagenase and stromelysin (transin). AP-1 inhibiting dominant negative deletion mutants of the c-jun gene have been developed that, when given to a mammal, may prevent or reverse carcinogenesis during early or late stages. For the treatment of cancer, a deletion mutant of the c-jun gene or the protein product may inhibit the elevated AP-1 transactivation that frequently characterizes tumor progression and may consequently prevent or reverse the development or further progression of



tumors. This invention also includes a method for determining whether a tumor promoter induces transformation via a pathway that depends on induction or elevation of AP-1 transcriptional activity and AP-1 target gene expression.

#### **Deazaflavin Compounds and Methods of Use Thereof**

Alan Weissman *et al.* (NCI).

U.S. Provisional Application No. 60/447,610 filed 13 Feb 2003 (DHHS Reference No. E-231-2002/0-US-01).

*Licensing Contact:* Jeffrey Walenta; 301/435-4633; [walentaj@mail.nih.gov](mailto:walentaj@mail.nih.gov).

Recently, a new strategy for the treatment of cancer was validated by the FDA approval of a small molecule proteasome inhibitor. This treatment strategy, while being efficacious, achieved this result by generally inhibiting all proteasome activity. However, the ubiquitin-mediated process that instructs the proteasome to degrade specific proteins is exquisitely specific to the type of protein degraded. The exact mechanism of how the individual components of the ubiquitin-mediated process regulate the amount of a specific protein present in a cell is just beginning to be elucidated with certainty. Drugs specific to these components can regulate cellular level of important proteins.

This invention is a family of 7-nitro-5-deazaflavin compounds that inhibit MDM2 protein activity in a cell. The MDM2 protein is an E3 ubiquitin ligase that mediates the transfer of ubiquitin to the important tumor suppressor protein p53: p53 will initiate apoptosis in cancer cells. By minimizing ubiquitin transfer to p53—and its subsequent degradation—the 7-nitro-5-deazaflavin compounds can potentially increase the tumor suppressor properties of p53 by maintaining a higher concentration of the important tumor suppressor protein within the cell.

This invention could be an important next generation proteasome inhibitor as it can potentially inhibit the degradation of specific proteasome substrates.

Dated: February 27, 2004.

**Steven M. Ferguson,**

*Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.*

[FR Doc. 04-4915 Filed 3-4-04; 8:45 am]

**BILLING CODE 4140-01-P**

## **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

### **National Institutes of Health**

#### **National Cancer Institute; Notice of Closed Meeting**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Cancer Institute Initial Review Group; Subcommittee E—Cancer Epidemiology, Prevention & Control.

*Date:* April 13-14, 2004.

*Time:* 8 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Select Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Mary C. Fletcher, PhD, Scientific Administrator, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Rm 8115, Bethesda, MD 20892, (301) 496-7413.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: February 27, 2004.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 04-4909 Filed 3-4-04; 8:45 am]

**BILLING CODE 4140-01-M**

## **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

### **National Institutes of Health**

#### **National Cancer Institute; Notice of Closed Meeting**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Cancer Institute Special Emphasis Panel; SBIR Topics 181, 184, 199.

*Date:* March 24, 2004.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

*Contact Person:* C. Michael Kerwin, PhD, MPH, Scientific Review Administrator, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8057, MSC 8329, Bethesda MD 20892-8329, 301-496-7421, [kerwinm@mail.nih.gov](mailto:kerwinm@mail.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: February 27, 2004.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 04-4913 Filed 3-4-04; 8:45 am]

**BILLING CODE 4140-01-M**

## **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

### **National Institutes of Health**

#### **National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meetings**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as

amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel; R21 Review.

*Date:* March 23, 2004.

*Time:* 11 a.m. to 12 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health—NIAAA, 5635 Fishers Lane, Bethesda, MD 20892930 (Telephone Conference Call).

*Contact Person:* Sathasiva B. Kandasamy, PhD, Scientific Review Administrator, Extramural Project Review Branch, Office of Scientific Affairs, National Institute on Alcohol Abuse and Alcoholism, Bethesda, MD 20892-9304, (301) 443-2926, [skandasa@mail.nih.gov](mailto:skandasa@mail.nih.gov).

*Name of Committee:* National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel; R21 Review.

*Date:* March 25, 2004.

*Time:* 1 p.m. to 2 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health—NIAAA, 5635 Fishers Lane, Bethesda, MD 20892930, (Telephone Conference Call).

*Contact Person:* Sathasiva B. Kandasamy, PhD, Scientific Review Administrator, Extramural Project Review Branch, Office of Scientific Affairs, National Institute on Alcohol Abuse and Alcoholism, Bethesda, MD 20892-9304, (301) 443-2926, [skandasa@mail.nih.gov](mailto:skandasa@mail.nih.gov).

*Name of Committee:* National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel; K01 Review.

*Date:* March 30, 2004.

*Time:* 1 p.m. to 2 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health—NIAAA, 5635 Fishers Lane, Bethesda, MD 2089230, (Telephone Conference Call).

*Contact Person:* Sathasiva B. Kandasamy, PhD, Scientific Review Administrator, Extramural Project Review Branch, Office of Scientific Affairs, National Institute on Alcohol Abuse and Alcoholism, Bethesda, MD 20892-9304, (301) 443-2926, [skandasa@mail.nih.gov](mailto:skandasa@mail.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs;

93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: February 27, 2004.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 04-4908 Filed 3-4-04; 8:45 am]

**BILLING CODE 4140-01-M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Child Health and Human Development Special Emphasis Panel; RFA-HD-03-007—Obstetric-Fetal Pharmacology Research Units.

*Date:* March 31–April 1, 2004.

*Time:* 9 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Ramada Inn Rockville, 1775 Rockville Pike, Rockville, MD 20852.

*Contact Person:* Kishena C. Wadhvani, PhD, MPH, Scientific Review Administrator, Division of Scientific Review, 9000 Rockville Pike, MSC 7510, 6100 Building, Room 5B01, Bethesda, MD 20892-7510, (301) 496-1485, [wadhwan@mail.nih.gov](mailto:wadhwan@mail.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: February 27, 2004.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 04-4910 Filed 3-4-04; 8:45 am]

**BILLING CODE 4140-01-M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Environmental Health Sciences Special Emphasis Panel; RFA 03-009.

*Date:* March 30–31, 2004.

*Time:* 7 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Durham Wyndham Garden—RDU/RTP, 4620 S Miami Blvd., Durham, NC 27703.

*Contact Person:* Leroy Worth, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC-30/Room 3171, Research Triangle Park, NC 27709, 919/541-0670, [worth@niehs.nih.gov](mailto:worth@niehs.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.984, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: February 27, 2004.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 04-4911 Filed 3-4-04; 8:45 am]

**BILLING CODE 4140-01-M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Environmental Health Sciences Special Emphasis Panel; Review of Grant Application.

*Date:* April 8, 2004.

*Time:* 1:30 p.m. to 3:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, Research Triangle Park, NC 27709 (Telephone Conference Call).

*Contact Person:* Linda K. Bass, PhD, Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC-30, Research Triangle Park, NC 27709, (919) 541-1307.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: February 27, 2004.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 04-4912 Filed 3-4-04; 8:45 am]

BILLING CODE 4140-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, P50 REVIEW.

*Date:* March 3, 2004.

*Time:* 11 a.m. to 1 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health—NIAAA, 5635, Fishers Lane, Room 3045, Rockville, MD 20892-930, (Telephone Conference Call).

*Contact Person:* Sathasiva B. Kandasamy, PhD, Scientific Review Administrator, Extramural Project Review Branch, Office of Scientific Affairs, National Institute on Alcohol Abuse and Alcoholism, Bethesda, MD 20892-9304, (301) 443-2926, [skandasa@mail.nih.gov](mailto:skandasa@mail.nih.gov).

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, R21 Review.

*Date:* March 12, 2004.

*Time:* 10 a.m. to 11 a.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health—NIAAA, 5635 Fishers Lane, 3045, Bethesda, MD 20892-930, (Telephone Conference Call).

*Contact Person:* Sathasiva B. Kandasamy, PhD, Scientific Review Administrator, Extramural Project Review Branch, Office of Scientific Affairs, National Institute on Alcohol Abuse and Alcoholism, Bethesda, MD 20892-9304, (301) 443-2926, [skandasa@mail.nih.gov](mailto:skandasa@mail.nih.gov).

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, Review of (1) U18 Grant Application.

*Date:* March 16, 2004.

*Time:* 1 p.m. to 2 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 5635, Fishers Lane, Room 3033, Rockville, MD 20892, (Telephone Conference Call).

*Contact Person:* Jeffrey I. Toward, PhD, Scientific Review Administrator, National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, Extramural Project Review Branch, OSA, 5635 Fishers Lane, Bethesda, MD 20892-9304, (301) 435-5337, [jtoward@mail.nih.gov](mailto:jtoward@mail.nih.gov).

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: February 27, 2004.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 04-4914 Filed 3-4-04; 8:45 am]

BILLING CODE 4140-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

#### Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

**AGENCY:** Substance Abuse and Mental Health Services Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Department of Health and Human Services (HHS) notifies Federal agencies of the laboratories currently certified to meet the standards of Subpart C of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines) published in the **Federal Register** on April 11, 1988 (53 FR 11970), and revised in the **Federal Register** on June 9, 1994 (59 FR 29908) and on September 30, 1997 (62 FR 51118). A notice listing all currently certified laboratories is published in the **Federal Register** during the first week of each month. If any laboratory's certification is suspended or revoked, the laboratory will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory has withdrawn from HHS' National Laboratory Certification

Program (NLCP) during the past month, it will be listed at the end, and will be omitted from the monthly listing thereafter.

This notice is also available on the Internet at <http://workplace.samhsa.gov> and <http://www.drugfreeworkplace.gov>

**FOR FURTHER INFORMATION CONTACT:** Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, 5600 Fishers Lane, Rockwall 2, Room 815, Rockville, Maryland 20857; 301-443-6014 (voice), 301-443-3031 (fax).

**SUPPLEMENTARY INFORMATION:** The Mandatory Guidelines were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100-71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards that laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified, an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection.

To maintain that certification, a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Mandatory Guidelines. A laboratory must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Mandatory Guidelines, the following laboratories meet the minimum standards set forth in the Mandatory Guidelines:

ACL Laboratories 8901 W. Lincoln Ave., West Allis, WI 53227, 414-328-7840/800-877-7016 (Formerly: Bayshore Clinical Laboratory)

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624, 585-429-2264

Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118, 901-794-5770/888-290-1150

Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, 615-255-2400

Baptist Medical Center-Toxicology Laboratory, 9601 I-630, Exit 7, Little Rock, AR 72205-7299, 501-202-2783, (Formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Clinical Reference Lab, 8433 Quivira Rd., Lenexa, KS 66215-2802, 800-445-6917

Diagnostic Services Inc., dba DSI, 12700 Westlinks Dr., Fort Myers, FL 33913, 239-561-8200/800-735-5416

DrugProof, Division of Dynacare/Laboratory of Pathology, LLC, 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 206-386-2661/800-898-0180, (Formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.)

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215-674-9310

Dynacare Kasper Medical Laboratories,\* 10150-102 St., Suite 200, Edmonton, Alberta, Canada T5J 5E2, 780-451-3702/800-661-9876

ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 662-236-2609

Express Analytical Labs, 3405 7th Ave., Suite 106, Marion, IA 52302, 319-377-0500

Gamma-Dynacare Medical Laboratories,\* A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall St., London, ONT, Canada N6A 1P4, 519-679-1630

General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608-267-6225

Kroll Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053, 504-361-8989/800-433-3823 (Formerly: Laboratory Specialists, Inc.)

LabOne, Inc., 10101 Renner Blvd., Lenexa, KS 66219, 913-888-3927/800-873-8845, (Formerly: Center for Laboratory Services, a Division of LabOne, Inc.)

Laboratory Corporation of America Holdings, 7207 N. Gessner Rd., Houston, TX 77040, 713-856-8288/800-800-2387

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908-526-2400/800-437-4986, (Formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Corporation of America Holdings, 1904 Alexander Dr., Research Triangle Park, NC 27709, 919-572-6900/800-833-3984, (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

Laboratory Corporation of America Holdings, 10788 Roselle St., San Diego, CA 92121, 800-882-7272, (Formerly: Poisonlab, Inc.)

Laboratory Corporation of America Holdings, 1120 Stateline Rd. West,

Southaven, MS 38671, 866-827-8042/800-233-6339, (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center)

Marshfield Laboratories, Forensic Toxicology Laboratory, 1000 North Oak Ave., Marshfield, WI 54449, 715-389-3734/800-331-3734

MAXXAM Analytics Inc.,\* 5540 McAdam Rd., Mississauga, ON, Canada L4Z 1P1, 905-890-2555, (Formerly: NOVAMANN (Ontario) Inc.)

MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 651-636-7466/800-832-3244

MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503-413-5295/800-950-5295

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Dr., Minneapolis, MN 55417, 612-725-2088

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661-322-4250/800-350-3515

Northwest Drug Testing, a division of NWT Inc., 1141 E. 3900 S., Salt Lake City, UT 84124, 801-293-2300/800-322-3361 (Formerly: NWT Drug Testing, NorthWest Toxicology, Inc.)

One Source Toxicology Laboratory, Inc., 1213 Genoa-Red Bluff, Pasadena, TX 77504, 888-747-3774, (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory)

Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440-0972, 541-687-2134

Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800-328-6942, (Formerly: Centinela Hospital Airport Toxicology Laboratory)

Pathology Associates Medical Laboratories, 110 West Cliff Dr., Spokane, WA 99204, 509-755-8991/800-541-7891x8991

PharmChem Laboratories, Inc., 4600 N. Beach, Haltom City, TX 76137, 817-605-5300 (Formerly: PharmChem Laboratories, Inc., Texas Division; Harris Medical Laboratory)

Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913-339-0372/800-821-3627

Quest Diagnostics Incorporated, 3175 Presidential Dr., Atlanta, GA 30340, 770-452-1590/800-729-6432 (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)

Quest Diagnostics Incorporated, 4770 Regent Blvd., Irving, TX 75063, 800-824-6152 (Moved from the Dallas location on 03/31/01; Formerly:

SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)

Quest Diagnostics Incorporated, 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119-5412, 702-733-7866/800-433-2750 (Formerly: Associated Pathologists Laboratories, Inc.)

Quest Diagnostics Incorporated, 400 Egypt Rd., Norristown, PA 19403, 610-631-4600/877-642-2216 (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)

Quest Diagnostics Incorporated, 506 E. State Pkwy., Schaumburg, IL 60173, 800-669-6995/847-885-2010 (Formerly: SmithKline Beecham Clinical Laboratories; International Toxicology Laboratories)

Quest Diagnostics Incorporated, 7600 Tyrone Ave., Van Nuys, CA 91405, 818-989-2520/800-877-2520 (Formerly: SmithKline Beecham Clinical Laboratories)

Scientific Testing Laboratories, Inc., 450 Southlake Blvd., Richmond, VA 23236, 804-378-9130

Sciteck Clinical Laboratories, Inc., 317 Rutledge Rd., Fletcher, NC 28732, 828-650-0409

S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109, 505-727-6300 / 800-999-5227

South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 574-234-4176 x276

Southwest Laboratories, 2727 W. Baseline Rd., Tempe, AZ 85283, 602-438-8507 / 800-279-0027

Sparrow Health System, Toxicology Testing Center, St. Lawrence Campus, 1210 W. Saginaw, Lansing, MI 48915, 517-377-0520 (Formerly: St. Lawrence Hospital & Healthcare System)

St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, 405-272-7052

Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203, 573-882-1273

Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305-593-2260

U.S. Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD, 20755-5235, 301-677-7085

The following laboratory has voluntarily withdrawn from the National Laboratory Certification Program, as of February 3, 2004:

Sure-Test Laboratories, Inc., 2900 Broad Ave., Memphis, TN 38112, 901-474-6026

The following laboratory has voluntarily withdrawn from the National Laboratory Certification Program, as of February 21, 2004: Alliance Laboratory Services, 3200 Burnet Ave., Cincinnati, OH 45229, 513-585-6870 (Formerly: Jewish Hospital of Cincinnati, Inc.)

\*The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS's NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on June 9, 1994 (59 FR 29908) and on September 30, 1997 (62 FR 51118). After receiving DOT certification, the laboratory will be included in the monthly list of HHS certified laboratories and participate in the NLCP certification maintenance program.

**Anna Marsh,**

*Executive Officer, SAMHSA.*

[FR Doc. 04-4942 Filed 3-4-04; 8:45 am]

**BILLING CODE 4160-20-P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### Endangered Species Recovery Permit Application

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of receipt of a permit application.

**SUMMARY:** The following applicant has applied for a scientific research permit to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*). The U.S. Fish and Wildlife Service ("we") solicits

review and comment from local, State, and Federal agencies, and the public on the following permit request.

**DATES:** Comments on this permit application must be received on or before April 5, 2004.

**ADDRESSES:** Written data or comments should be submitted to the U.S. Fish and Wildlife Service, Chief, Endangered Species, Ecological Services, 911 NE. 11th Avenue, Portland, Oregon 97232-4181 (fax: (503) 231-6243). Please refer to the permit number when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

**FOR FURTHER INFORMATION CONTACT:** Documents and other information submitted with this application are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to the address above (telephone: 503-231-2063). Please refer to the permit number when requesting copies of documents.

#### SUPPLEMENTARY INFORMATION:

##### Permit No. TE-702631

*Applicant:* Regional Director, Region 1, U.S. Fish and Wildlife Service, Portland, Oregon.

The permittee requests an amendment to take the island fox (*Urocyon littoralis*) in conjunction with recovery efforts throughout the range of the species for the purpose of enhancing its propagation and survival.

We solicit public review and comment on this recovery permit application.

Dated: February 11, 2004.

**David B. Allen,**

*Regional Director, Region 1, U.S. Fish and Wildlife Service.*

[FR Doc. 04-4903 Filed 3-4-04; 8:45 am]

**BILLING CODE 4310-55-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

#### Alturas Indian Rancheria of California Liquor Control Ordinance

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice publishes the Alturas Indian Rancheria of California Liquor Control Ordinance. The

ordinance regulates and controls the importation, distribution, possession, consumption and sale of alcohol within the boundaries of the Alturas Indian Rancheria.

**EFFECTIVE DATE:** This Ordinance is effective on March 5, 2004.

**FOR FURTHER INFORMATION CONTACT:** Duane T. Bird Bear, Office of Tribal Services, Bureau of Indian Affairs, 1951 Constitution Avenue, NW., MS-320-SIB, Washington, DC 20240, Telephone: (202) 513-7641.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Act of August 15, 1953, Public Law 83-277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice v. Rehner*, 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian country. The General Council of the Alturas Indian Rancheria of California adopted a Liquor Control Ordinance on August 29, 2003. The purpose of this ordinance is to govern the importation, distribution, possession, consumption, and sale of liquor within the boundaries of the Alturas Indian Rancheria, California.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs. Amendments to the ordinance are subject to the approval of the Assistant Secretary for Indian Affairs and published in the **Federal Register** before the amendments become effective.

I certify that the Alturas Indian Rancheria Liquor Control Ordinance was duly adopted by the General Council of the Alturas Indian Rancheria through General Council Resolution No. 03-003 by a vote of four (4) for, zero (0) against, and zero (0) abstaining, on August 29, 2003.

Dated: February 27, 2004.

**Dave Anderson,**  
Assistant Secretary—Indian Affairs.

The Alturas Indian Rancheria Liquor Control Ordinance reads as follows:

#### **The Alturas Indian Rancheria Liquor Control Ordinance**

As Adopted by General Council Resolution No. 03-0003 on August 29, 2003

#### *Article I—Declaration of Public Policy and Purpose*

**Section 1.1.** The importation, distribution, possession, consumption and sale of liquor within the boundaries of the Alturas Indian Rancheria is a

matter of special concern to the members of the Alturas Indian Rancheria (the “Tribe”).

**Section 1.2.** Federal law, as codified at 18 U.S.C. 1154 and 1161, currently prohibits the introduction of liquor into Indian country, except in accordance with State law and the duly enacted law of the Tribe. By adoption of this Ordinance, it is the intention of the Alturas Indian Rancheria General Council to establish tribal law regulating the sale, distribution and consumption of liquor on tribal lands and to ensure that such activity conforms to all applicable provisions of the laws of the State of California.

**Section 1.3.** The General Council, according to article VII, section 3, (a) of the Constitution and Bylaws of the Alturas Indian Rancheria (the “Constitution”) as the governing body of the Tribe is endowed with the power to (i) promulgate all ordinances, resolutions, and other enactments of the Alturas Indian Rancheria; and (ii) to represent the members in all negotiations between the Tribe and local, state and Federal Government, their agencies and officers. The General Council has determined that it is in the best interest of the Tribe to enact a tribal ordinance governing the importation, distribution, sale, possession, and consumption of liquor within the boundaries of the Alturas Indian Rancheria (the “Rancheria”). By General Council Resolution No. 03-0003, the General Council has adopted this Ordinance for the regulation of the importation, distribution, sale, possession and consumption of liquor on the Rancheria.

**Section 1.4.** The General Council has determined that the purchase, distribution and sale of liquor shall take place only at duly licensed (i) tribally-owned enterprises; (ii) tribally-licensed establishments; and (iii) tribally-sanctioned Special Events, all as operating on tribal lands.

**Section 1.5.** The General Council has determined that any importation, possession, consumption, sale or other commercial distribution of liquor on the Rancheria, other than sales and distribution in strict compliance with this Ordinance, is detrimental to the health, safety and welfare of the members of the Tribe and is therefore prohibited.

**Section 1.6.** Based upon the foregoing findings and determinations, the General Council hereby enacts this Liquor Control Ordinance (this “Ordinance”) as follows:

#### *Article II—Definitions*

As used in this Ordinance, the following words shall have the following meanings, unless the context clearly requires otherwise.

**Section 2.1.** *Alcohol* means that substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine, which is commonly produced by the fermentation, or distillation of grain, starch, molasses or sugar, or other substances including dilutions and mixtures of this substance.

**Section 2.2.** *Alcoholic Beverage* has the same meaning as the term “liquor” as defined herein.

**Section 2.3.** *Bar* means any establishment with special space and accommodations for sale by the glass and for consumption on the premises, of liquor, as herein defined.

**Section 2.4.** *Beer* means any beverage obtained by the alcoholic fermentation at an infusion or decoction of pure hops, or pure extract of hops and pure barley malt or other wholesome grain or cereal in pure water containing not more than four percent (4%) of alcohol by volume. For the purpose of this title, any such beverage, including ale, stout, and porter, containing more than four percent (4%) of alcohol by weight shall be referred to as strong beer.

**Section 2.5.** *General Council* means the duly elected entity, elected by the General Council pursuant to the Constitution.

**Section 2.6.** *Constitution* is the Constitution and Bylaws of the Alturas Indian Rancheria, adopted by the Tribe on April 18, 1972, and approved by the Secretary of the Interior on May 30, 1972.

**Section 2.7.** *Gaming Commission* is the Tribal Gaming body appointed in accordance with the duly adopted and approved Tribal Gaming Ordinance of the Alturas Indian Rancheria.

**Section 2.8.** *Gaming Compact* means the federally approved Tribal-State Compact, dated October 8, 1999, between the State of California and the Tribe.

**Section 2.9.** *Liquor* means the four varieties of liquor herein defined (alcohol, spirits, wine and beer), and all fermented spirituous, vinous, or malt liquor or combinations thereof and mixed liquor, or a part of which is fermented, spirituous, vinous, or malt liquor, or otherwise intoxicating; and every other liquid or solid or semisolid or other substance, patented or not, containing alcohol, spirits, wine or beer, and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption, and any liquid, semisolid, solid, or other substances

that contains more than one percent (1%) of alcohol by weight, shall be conclusively deemed to be intoxicating.

**Section 2.10. *Liquor Store*** means any store at which liquor is sold and, for the purpose of this Ordinance, including any store only a portion of which is devoted to the sale of liquor or beer.

**Section 2.11. *Licensed Wholesaler*** means a wholesale seller of liquor that is duly licensed by the Tribe and the State.

**Section 2.12. *Malt liquor*** means beer, strong beer, ale, stout and porter.

**Section 2.13. *Package*** means any container or receptacle used for holding liquor.

**Section 2.14. *Public Place*** includes gaming facilities and commercial or community facilities of every nature which are open to and/or are generally used by the public and to which the public is permitted to have unrestricted access; public conveyances of all kinds and character; and all other places of like or similar nature to which the general public has unrestricted access, and which generally are used by the public.

**Section 2.15. *Sale and Sell*** mean any exchange, barter, and traffic; and also includes the selling of or supplying or distributing, by any means whatsoever, of liquor, or of any liquid known or described as beer or by any name whatsoever commonly used to describe malt or brewed liquor, or of wine, by any person to any person.

**Section 2.16. *Special Event*** means any social, charitable or for-profit discreet activity or event conducted by the General Council or any tribal enterprise on tribal lands at which liquor is sold or proposed to be sold.

**Section 2.17. *Spirits*** means any beverage, which contains alcohol obtained by distillation, including wines exceeding seventeen percent (17%) of alcohol by weight.

**Section 2.18. *State Law*** means the duly enacted applicable laws and regulations of the State of California, specifically, Division 9—Alcoholic Beverages, as set forth at California Business and Professions Code Division 9, Sections 23000 through 25762, as amended from time to time, and all applicable provisions of the Compact.

**Section 2.19. *Tribe*** means the Alturas Indian Rancheria, located in Modoc County, California.

**Section 2.20. *Tribal Enterprise*** means any business entity, operation or enterprise owned, in whole or in part, by the Tribe.

**Section 2.21. *Tribal Land*** means all land within the exterior boundaries of the Alturas Indian Rancheria that is

held in trust by the United States for the benefit of the Tribe.

**Section 2.22. *Wine*** means any alcoholic beverage obtained by fermentation of any fruits (grapes, berries, apples, etc.), or fruit juice and containing not more than seventeen percent (17%) of alcohol by weight, including sweet wines fortified with wine spirits, such as port, sherry, muscatel and angelica, not exceeding seventeen percent (17%) of alcohol by weight.

#### *Article III—Enforcement*

**Section 3.1. *General Council Powers.*** The General Council or its designees, in furtherance of this Ordinance, shall have the power and duty to:

(a) Publish and enforce such rules and regulations governing the purchase, sale, consumption and distribution of alcoholic beverages in public places on the Alturas Indian Rancheria as the General Council deems necessary.

(b) Employ managers, accountants, security personnel, inspectors and such other persons as shall be reasonably necessary to allow the General Council to exercise its authority as set forth in this Ordinance.

(c) Issue licenses permitting the sale and/or distribution of Liquor on the Alturas Indian Rancheria.

(d) Hold hearings on violations of this Ordinance or for the issuance or revocation of licenses hereunder;

(e) Bring suit in the appropriate court to enforce this Ordinance as necessary;

(f) Determine and seek damages for violation of this Ordinance;

(g) Publish notices and make such reports to the General Council as may be appropriate;

(h) Collect sales taxes and fees levied or set by the General Council on liquor sales and the issuance of liquor licenses, and to keep accurate records, books and accounts;

(i) Take or facilitate all action necessary to follow or implement applicable provisions of State law and Federal law as required;

(j) Cooperate with appropriate State of California authorities for purposes of prosecution of any violation of any criminal law of the State of California; and

(k) Exercise such other powers as may be delegated from time to time by the General Council.

**Section 3.2. *Limitation on Powers.*** In the exercise of its powers and duties under this Ordinance, the General Council and its individual members, employees and agents shall not:

(a) Accept any gratuity, compensation or other thing of value from any liquor wholesaler, retailer or distributor, or from any licensee; or

(b) Waive the immunity of the Tribe from suit except by express resolution of the General Council, such waiver being subject to the following limitations: the waiver must be transaction specific, limited as to duration and beneficiary, include a provision that limits recourse only to specified assets or revenues of the Tribe or a tribal entity, and specifies the process and venue for dispute resolution, including applicable law.

**Section 3.3. *Inspection Rights.*** The public places on or within which liquor is sold or distributed shall be open for inspection by the General Council or its designees at all reasonable times for the purposes of ascertaining compliance with this Ordinance and other regulations promulgated pursuant hereto.

#### *Article IV—Liquor Sales*

**Section 4.1. *License Required.*** No distribution or sales of liquor shall be made on or within public places within the exterior boundaries of the Alturas Indian Rancheria, except at a duly licensed and authorized Special Event, a Tribal Enterprise, Bar, or Liquor Store located on tribal lands.

**Section 4.2. *Sales for Cash.*** All liquor sales within the Reservation boundaries shall be on a cash only basis and no credit shall be extended to any person, organization or entity, except that this provision does not prevent the payment for purchases with the use of cashiers or personal checks, payroll checks, debit credit cards or credit cards issued by any financial institution.

**Section 4.3. *Sale For Personal Consumption.*** Except for sales by Licensed Wholesalers, all sales shall be for the personal use and consumption of the purchaser or members of the purchaser's household, including guests, who have attained a minimum age of twenty-one (21). Resale of any alcoholic beverage purchased within the exterior boundaries of the Reservation is prohibited. Any person *who* is not licensed pursuant to this Ordinance who purchases an alcoholic beverage within the boundaries of the Reservation and re-sells it, whether in the original container or not, shall be guilty of a violation of this Ordinance and shall be subjected to exclusion from tribal lands or liability for money damages of up to five hundred dollars (\$500), as determined by the Tribal Gaming Commission after notice and an opportunity to be heard.

**Section 4.4. *Compliance Required.*** All distribution, sale and consumption of liquor on tribal lands shall be in compliance with this Ordinance including all applicable provisions of State law and applicable Federal law.



*Article V—Licensing*

**Section 5.1. Licensing Procedures.** In order to control the proliferation of establishments on the Reservation that sell or provide liquor by the bottle or by the drink, all persons or entities that desire to sell liquor, whether wholesale or retail, within the exterior boundaries of the Alturas Indian Rancheria must apply to the General Council for a license to sell or provide liquor; provided, however, that no license is necessary to provide liquor within a private single-family residence on the Reservation for which no money is requested or paid.

**Section 5.2. State Licensing.** In the event dual tribal and State licenses are required by State law, no person shall be allowed or permitted to sell or provide liquor on the Alturas Indian Rancheria unless such person is also licensed by the State of California, as required, to sell or provide such liquor. If any such license from the State is revoked or suspended, any applicable tribal license shall automatically be revoked or suspended.

**Section 5.3. Application.** Any person applying for a license to sell or provide liquor on the Alturas Indian Rancheria shall complete and submit an application provided for this purpose by the General Council and pay such application fee as may be set from time-to-time by the General Council for this purpose. An incomplete application will not be considered. The General Council shall establish licensing procedures and application forms for wholesalers, retailers and special events.

**Section 5.4. Issuance of License.** The General Council may issue a license if it believes that such issuance is in the best interest of the Tribe, the residents of the Alturas Indian Rancheria and the surrounding community. Licensure is a privilege, not a right, and the decision to issue any license rests in the sole discretion of the General Council.

**Section 5.5. Period of License.** Each license may be issued for a period not to exceed two (2) years from the date of issuance.

**Section 5.6. Renewal of License.** A licensee may renew its license if it has complied in full with this Ordinance and has maintained its licensure with the State of California, as required; however, the General Council may refuse to renew a license if it finds that doing so would not be in the best interests of the health and safety of the members of the Tribe and the other residents of the Alturas Indian Rancheria.

**Section 5.7. Revocation of License.** The General Council may revoke a license for reasonable cause upon notice and hearing at which the licensee shall be given an opportunity to respond to any charges against it and, to demonstrate why the license should not be suspended or revoked.

**Section 5.8. Transferability of Licenses.** Licenses issued by the General Council shall not be transferable and may only be utilized by the person or entity in whose name it was issued.

*Article VI—Taxes*

**Section 6.1. Sales Tax.** The General Council shall have the authority to impose a sales tax on all wholesale and retail liquor sales that take place on tribal lands. Such tax may be implemented by duly enacted resolution of the General Council, as supplemented by regulations adopted pursuant to this Ordinance. Any tax imposed by authority of this section shall apply to all retail and wholesale sales of liquor on tribal lands, and to the extent permitted by law shall preempt any tax imposed on such liquor sales by the State of California.

**Section 6.2. Payment of Taxes to the Tribe.** All taxes imposed pursuant to this Article VI shall be paid over to the General Treasury of the Tribe and be subject to the distribution by the General Council in accordance with its usual appropriation procedures for essential governmental functions and social services, including administration of this Ordinance.

*Article VII—Rules, Regulations and Enforcement*

**Section 7.1. Evidence.** In any proceeding under this title, proof of one unlawful sale or distribution of liquor shall suffice to establish prima facie intent or purpose of unlawfully keeping liquor for sale, selling liquor or distributing liquor in violation of this Ordinance.

**Section 7.2. Civil Violations.** Any person who shall sell or offer for sale or distribute or transport in any manner any liquor in violation of this Ordinance, or who shall have liquor in his/her possession for distribution or resale without a permit, shall be guilty of a violation of this Ordinance subjecting him/her to civil damages assessed by the General Council. Nothing in this Ordinance shall apply to the possession or transportation of any quantity of liquor by members of the Tribe or other persons located on tribal lands for their personal or other noncommercial use, and the possession, transportation, sale, consumption or other disposition of liquor outside

public places on the Alturas Indian Rancheria shall be governed solely by the laws of the State of California.

**Section 7.3. Illegal Purchases.** Any person within the boundaries of the Alturas Indian Rancheria who, in a public place, buys liquor from any person other than at a properly licensed facility shall be guilty of a violation of this Ordinance.

**Section 7.4. Sale to Intoxicated Person.** Any person who sells liquor to a person apparently under the influence of liquor shall be guilty of a violation of this Ordinance.

**Section 7.5. Providing Liquor to Underage Person.** No person under the age of twenty-one (21) years shall serve, consume, acquire or have in his/her possession any alcoholic beverages. Any person violating this section in a public place shall be guilty of a separate violation of this Ordinance for each and every drink so consumed.

**Section 7.6. Selling Liquor to Underage Person.** Any person who, in a public place, shall sell or provide any liquor to any person under the age of twenty-one (21) years shall be guilty of a violation of this Ordinance for each such sale or drink, provided.

**Section 7.7. Civil Penalty.** Any person guilty of a violation of this Ordinance shall, be liable to pay the Tribe the amount of two hundred fifty dollars (\$250) per violation as civil damages to defray the Tribe's cost of enforcement of this Ordinance. The payment of such damages in each case shall be determined by the General Council based upon a preponderance of the evidence available to the General Council after the person alleged to have violated this Ordinance has been given notice, hearing and an opportunity to respond to such allegations.

**Section 7.8. Identification Requirement.** Whenever it reasonably appears to a licensed purveyor of liquor that a person seeking to purchase liquor is under the age of twenty-seven (27), the prospective purchaser shall be required to present any one of the following officially issued cards of identification which shows his/her correct age and bears his/her signature and photograph:

(1) Drivers license of any State or identification card issued by any State Department of Motor Vehicles;

(2) United States Uniformed Services identification documents;

(3) Passport; or

(4) Gaming license or work permit issued by the Tribal Gaming Commission, if said license or permit contains the bearer's correct age, signature and photograph.

*Article VIII—Abatement***Section 8.1. Public Nuisance**

*Established.* Any public place where liquor is sold, manufactured, bartered; exchanged, given away, furnished, or otherwise disposed of in violation of the provisions of this Ordinance, and all property kept in and used in maintaining such place, is hereby declared to be a public nuisance.

**Section 8.2. Abatement of Nuisance.**

The Tribal Chairperson, upon authorization by a majority of the General Council or, if he/she fails to do so, a majority of the General Council acting at a duly-called meeting at which a quorum is present, shall institute and maintain an action in a court of competent jurisdiction in the name of the Tribe to abate and perpetually enjoin any nuisance declared under this title. Upon establishment that probable cause exists to find that a nuisance exists, restraining orders, temporary injunctions and permanent injunctions may be granted in the cause as in other injunction proceedings, and upon final judgment against the defendant the court may also order the room, structure or place closed for a period of one (1) year or until the owner, lessee, tenant or occupant thereof shall give bond of sufficient sum of not less than five thousand dollars (\$5,000) payable to the Tribe and conditioned that liquor will not be thereafter manufactured, kept, sold, bartered, exchanged, given away, furnished or otherwise disposed of thereof in violation of the provision of this title or of any other applicable tribal law, and that s/he will pay all fines, costs and damages assessed against him/her for any violation of this title or other Tribal liquor laws. If any conditions of the bond should be violated, the whole amount may be recovered for the use of the Tribe.

**Section 8.3. Evidence.** In all cases where any person has been found responsible for a violation of this Ordinance relating to manufacture, importation, transportation, possession, distribution and sale of liquor, an action may be brought to abate as a public nuisance the use of any real estate or other property involved in the violation of this Ordinance, and proof of violation of this Ordinance shall be prima facie evidence that the room, house, building, vehicle, structure, or place against which such action is brought, is a public nuisance.

*Article IX—Use of Proceeds***Section 9.1. Application of Proceeds.**

The gross proceeds collected by the General Council from all Licensing of the sale of alcoholic beverages on tribal

lands and from fines imposed as a result of violations of this Ordinance, shall be applied as follows:

(a) First, for the payment of all necessary personnel, administrative costs, and legal fees incurred in the enforcement of this Ordinance; and

(b) Second, the remainder shall be turned over to the General Fund of the Tribe and expended by the General Council for governmental services and programs on tribal lands.

*Article X—Miscellaneous Provisions*

**Section 10.1. Severability and Savings Clause.** If any provision or application of this Ordinance is determined by judicial review to be invalid, such provision shall be deemed ineffective and void, but shall not render ineffectual the remaining portions of this Ordinance, which shall remain in full force and effect.

**Section 10.2. Effective Date.** This Ordinance shall be effective as of the date on which the Secretary of the Interior certifies this Ordinance and publishes the same in the **Federal Register**.

**Section 10.3. Repeal of Prior Acts.** Any and all prior resolutions, laws, regulations or ordinances pertaining to the subject matter set forth in this Ordinance are hereby rescinded and repealed in their entirety.

**Section 10.4. Conformance with State Law and Federal Law.** All acts and transactions under this Ordinance shall be in conformity with the Compact, the laws of the State of California and applicable Federal Law as that term is used in 18 U.S.C. 1161, but only to the extent required by the laws of the United States.

*Article XI—Amendments*

This Ordinance may be amended only pursuant to a duly enacted Resolution of the General Council, with certification by the Secretary of the Interior and publication in the **Federal Register**, if required.

Wendy Del Rosa,

*Chairperson.*

Phillip Del Rosa,

*Secretary-Treasurer.*

[FR Doc. 04-4941 Filed 3-4-04; 8:45 am]

**BILLING CODE 4310-4J-P**

**DEPARTMENT OF THE INTERIOR****Bureau of Land Management**

**[WO640-1020-PF-24-1A]**

**Call for Nominations for Resource Advisory Councils**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Resource Advisory Council call for nominations.

**SUMMARY:** The purpose of this notice is to request public nominations for the Bureau of Land Management (BLM) Resource Advisory Councils (RACs) that have member terms expiring this year. The RACs provide advice and recommendations to BLM on land use planning and management of the public lands and resources within their geographic areas.

**DATES:** BLM will accept public nominations for 45 days after the publication date of this notice. Send all nominations to the appropriate BLM State Office by no later than April 19, 2004.

**ADDRESSES:** See **SUPPLEMENTARY INFORMATION** for the locations to send your nominations.

**FOR FURTHER INFORMATION CONTACT:** Melanie Wilson Gore, U.S. Department of the Interior, Bureau of Land Management, Intergovernmental Affairs, 1849 C Street, MS-LS-406, Washington, DC 20240; 202-452-0377.

**SUPPLEMENTARY INFORMATION:** The Federal Land Policy and Management Act (FLPMA) (43 U.S.C. 1730) directs the Secretary of the Interior to involve the public in planning and issues related to management of lands administered by BLM. Section 309 of FLPMA directs the Secretary to select 10 to 15 member citizen-based advisory councils that are consistent with the requirements of Federal Advisory Committee Act (FACA). As required by the FACA, RAC membership must be balanced and representative of the various interests concerned with the management of the public lands. The BLM regulations governing RACs are found at 43 CFR part 1784. These regulations describe three general representative categories:

*Category One*—Holders of Federal grazing permits and representatives of energy and mineral development, timber industry, transportation or rights-of-way, off-highway vehicle use, and commercial recreation;

*Category Two*—Representatives of nationally or regionally recognized environmental organizations, archaeological and historic interests,

dispersed recreation, and wild horse and burro groups;

*Category Three*—Holders of State, county or local elected office, employees of a State agency responsible for management of natural resources, academicians involved in natural sciences, representatives of Indian tribes, and the affected public-at-large.

Individuals may nominate themselves or others. Nominees must be residents of the State or States in which the RAC has jurisdiction. BLM will evaluate nominees based on their education, training, and experience and their knowledge of the geographical area of the RAC. Nominees should demonstrate a commitment to collaborative resource decisionmaking. The following must accompany nominations received in this public call for nominations:

- Letters of reference from represented interests or organizations,
- A completed background information nomination form,
- Any other information that speaks to the nominee's qualifications.

Simultaneous with this notice, BLM State Offices will issue press releases providing additional information for submitting nominations, with specifics about the number and categories of member positions available for each RAC in the State. Nominations for RACs should be sent to the appropriate BLM offices listed below.

### Alaska

#### Alaska RAC

Teresa McPherson, Alaska State Office, BLM, 222 West 7th Avenue, #13, Anchorage, Alaska 99513, (907) 271-3322

### Arizona

#### Arizona RAC

Deborah Stevens, Arizona State Office, BLM, 222 N. Central Avenue, Phoenix, Arizona 85004-2203, (602) 417-9215

### California

#### Central California RAC

Deane Swickard, Folsom Field Office, BLM, 63 Natoma Street, Folsom, California 95630, (916) 985-4474

#### Northeastern California RAC

Jeff Fontana, Eagle Lake Field Office, BLM, 2950 Riverside Drive, Susanville, California 96130, (530) 257-0456

#### Northwestern California RAC

Jeff Fontana, Eagle Lake Field Office, BLM, 2950 Riverside Drive, Susanville, California 96130, (530) 257-0456

### Colorado

#### Front Range RAC

Ken Smith, Canon City Field Office, BLM, 3170 E. Main Street, Canon City, Colorado 81212, (719) 269-8553

#### Northwest RAC

Steve Hall, Western Slope Center, BLM, 2815 H Road, Grand Junction, Colorado 81506, (970) 244-3052

#### Southwest RAC

Steve Hall, Western Slope Center, BLM, 2815 H Road, Grand Junction, Colorado 81506, (970) 244-3052.

### Montana and Dakotas

#### Eastern Montana RAC

Mark Jacobsen, Miles City Field Office, BLM, 111 Garryowen Road, Miles City, Montana 59301, (406) 233-2831.

#### Central Montana RAC

Kaylene Patten, Lewistown Field Office, BLM, Airport Road, P.O. Box 1160, Lewistown, Montana 59457, (406) 538-1957.

#### Western Montana RAC

Marilyn Krause, Butte Field Office, BLM, 106 North Parkmont, Butte, Montana 59701-3388, (406) 533-7617.

#### Dakotas RAC

Mary Ramsey, North Dakota Field Office, BLM, 2933 Third Avenue West, Dickinson, North Dakota 58601-2619, (701) 227-7700.

### Nevada

Mojave-Southern RAC; Northeastern Great Basin RAC; Sierra Front Northwestern RAC

Debra Kolkman, Nevada State Office, BLM, 1340 Financial Boulevard, Reno, Nevada 89502-7147, (775) 289-1946.

### New Mexico

#### New Mexico RAC

Theresa Herrera, New Mexico State Office, BLM, 1474 Rodeo Road, Santa Fe, New Mexico 87505, (505) 438-7517.

### Oregon/Washington

Eastern Washington RAC; John Day/Snake RAC; Southeast Oregon RAC

Pam Robbins, Oregon State Office, BLM, 333 SW First Avenue, PO Box 2965, Portland, OR 97208-2965, (503) 808-6306.

### Utah

#### Utah RAC

Sherry Foot, Utah State Office, BLM, 324 South State Street, Suite 301, P.O. Box 45155, Salt Lake City, Utah 84145-0155, (801) 539-4195.

Dated: February 19, 2004.

**Jim Hughes,**

*Director, Bureau of Land Management.*

[FR Doc. 04-4959 Filed 3-4-04; 8:45 am]

**BILLING CODE 4310-84-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[CA-680-04-1920-EA-4819]

### Closure and Restriction Orders, California and Nevada

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Temporary closure of selected public lands in California and Nevada during a research event known as the "Grand Challenge for Autonomous Ground Vehicles" to be held on Saturday, March 13, 2004.

**SUMMARY:** The Defense Advanced Research Projects Agency (DARPA) has official Bureau of Land Management authority to conduct a research event known as the "Grand Challenge for Autonomous Ground Vehicles" on California and Nevada lands in March, 2004. In an attempt to accelerate the development of autonomous vehicle technology, qualified, autonomous, unmanned vehicles will navigate along a specific route in compliance with parameters provided by DARPA; all vehicles will be under the control of DARPA during the event. The District Manager of the California Desert District (California) and the Field Manager of the Las Vegas Field Office (Nevada) of the Bureau of Land Management announce the temporary closure of selected public lands under their administration. This action involves two area closures and one route closure and is being taken to help ensure public safety and prevent unnecessary environmental degradation during the course of this event. At 4:30 a.m., Pacific Standard Time, on March 13, 2004, a final route of travel, taken from a total of 17 possible routes analyzed in the Environmental Assessment for the Grand Challenge will be announced to the general public and to 20 (twenty) teams which have constructed autonomous (robotic) vehicles for this event. This research event will involve twenty (20) fully autonomous ground vehicles which will be required to

complete the entire course route, beginning in California and ending in Nevada, within a ten-hour period on that day. The event will begin at 6:30 a.m., Pacific Standard Time, in California. The public is welcome to attend but will be restricted to designated viewing areas during the event. The closures include a portion of a recreational area in California, a portion of public lands in Nevada, and the final route selected for the event.

**DATES:** This closure order goes into effect at 6:30 a.m. on Saturday, March 13, 2004, and shall remain in effect until 6:30 a.m. on Sunday, March 14, 2004, or until deemed safe for the public by law enforcement authorities. For safety reasons, the Grand Challenge event can only be run during daylight hours. Any other situation will require local direction in order to complete the event by March 21, 2004.

**FOR FURTHER INFORMATION CONTACT:** Barry Nelson, BLM Law Enforcement Chief Ranger, BLM Barstow Field Office, 2601 Barstow Road, Barstow, California 92311. Telephone 760-252-6070.

**SUPPLEMENTARY INFORMATION:**

**1. Closure Area One (Within a Recreational Area in California)**

*San Bernardino Meridian*

- T. 7 N., R. 1 W., sections. 4, 5, 6, 7, and 8.
- T. 8 N., R. 1 W., sections. 18, 19, 20, 29, 30, 31, 32, and 33.
- T. 7 N., R. 2 W., sections. 1, 2, 3, 4, 5, 8, 9, 10, 11, and 12.
- T. 8 N., R. 2 W., sections. 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 32, 33, 34, 35, and 36.

**2. Closure Area Two (On Public Lands in Nevada)**

*San Bernardino Meridian*

- T. 24 S., R. 8 E., sections. 22 and 23.

*Mt. Diablo Meridian*

- T. 20 S., R. 52 E., sections. 25, 26, and 36.
- T. 20 S., R. 53 E., sections. 13, 14, 15, 16, 20, 21, 22, 23, 24, and 25.
- T. 20 S., R. 54 E., sections. 29, 30, 32, 33, and 34.
- T. 21 S., R. 54 E., sections. 2, 3, 4, 10, 11, 12, and 13.
- T. 21 S., R. 55 E., sections. 18, 19, 20, 21, 27, 28, 29, 34, and 35.
- T. 22 S., R. 55 E., sections. 1, 2, and 12.
- T. 22 S., R. 56 E., sections. 7, 8, 16, 17, 21, 22, 23, 25, 26, and 27.
- T. 22 S., R. 57 E., sections. 22, 23, 24, 27, 28, 29, and 30.
- T. 22 S., R. 58 E., sections. 19, 20, 24, 25, 26, 28, and 29.

- T. 22 S., R. 59 E., sections. 13, 14, 15, 16, 17, 19, 20, and 24.
- T. 22 S., R. 60 E., sections. 13, 19, 20, 21, 22, 23, and 24.
- T. 22 S., R. 61 E., sections. 8, 9, 16, 17, 18, 20, 21, 24, 25, 26, 28, 29, 33, 34, and 35.
- T. 22 S., R. 62 E., sections. 13, 14, 15, 16, 17, 19, and 20.
- T. 22 S., R. 63 E., sections. 34, 35 (additional corner through Henderson with no numbered section).
- T. 23 S., R. 60 E., section. 36.
- T. 23 S., R. 61 E., sections. 3, 4, 5, 8, 9, 17, 19, 20, 30, and 31.
- T. 23 S., R. 63 E., sections. 2, 11, 14, 23, 26, and 35.
- T. 24 S., R. 57 E., sections. 12, 13, 14, 22, 23, 24, 27, 28, 32, and 33.
- T. 24 S., R. 58 E., sections. 7, 8, 15, 16, 17, 22, 23, 25, 26, and 36.
- T. 24 S., R. 59 E., sections. 31 and 32.
- T. 24 S., R. 60 E., sections. 1, 2, 10, 11, 12, 15, 16, 21, 22, 27, 28, 29, 31, and 34.
- T. 24 S., R. 63 E., sections. 3, 10, 15, 22, 27, 28, and 33.
- T. 25 S., R. 57 E., sections. 4, 5, 7, and 8.
- T. 25 S., R. 59 E., sections. 3, 4, 5, 10, 11, 12, 13, 14, 22, 23, 24, 26, 27, 34, 35, and 36.
- T. 25 S., R. 60 E., sections. 3, 4, 5, 6, 7, 8, 9, 10, 16, 17, 21, 22, 25, 26, 27, 35, and 36.
- T. 25 S., R. 63 E., sections. 4, 9, 16, 20, 21, 28, 29, and 32.
- T. 26 S., R. 59 E., sections. 1, 2, 3, 4, 9, 10, 15, 16, 20, 21, 22, 27, 28, 29, 32, 33, and 34.
- T. 26 S., R. 60 E., sections. 2, 3, 4, 5, 6, 7, and 8.
- T. 26 S., R. 63 E., sections. 5, 8, 17, 20, 28, 29, and 33.
- T. 27 S., R. 59 E., sections. 4, 5, 6, 7, 8, 9, and 16.
- T. 27 S., R. 63 E., sections. 3, 4, 10, 11, 14, 23, 26, and 35.
- T. 28 S., R. 60 E., sections. 25, and 26.
- T. 28 S., R. 61 E., sections. 12, 13, 14, 15, 20, 21, 22, 29, and 30.
- T. 28 S., R. 62 E., sections. 7, 15, 16, 17, 18, 22, 23, 24, and 25.
- T. 28 S., R. 63 E., sections. 2, 11, 14, 22, 23, 27, 28, 29, 30, 33, 34, and 35.
- T. 29 S., R. 63 E., sections. 2, 3, 4, 9, 10, 11, 12, 14, 15, 16, 21, 23, 24, 25, 28, 33, and 36.
- T. 30 S., R. 63 E., sections. 1, 4, 9, 12, 13, 16, 21, 26, and 33.
- T. 30 S., R. 64 E., sections. 18, 19, 30, and 31.
- T. 31 S., R. 63 E., sections. 4 and 9.
- T. 31 S., R. 64 E., sections. 6, 7, 8, 17, 20, 29, and 32.
- T. 32 S., R. 64 E., sections. 4, 5, and 9.

**3. Closure Area Three (Description of the Seventeen [17] Possible Routes of the Grand Challenge Route Network)**

*Central Route 1*

Central Route 1 begins on the open desert floor in the Stoddard Valley Off-Highway Vehicle (OHV) area. Leaving Stoddard Valley, it crosses Route 247 (1) and proceeds northeast over Daggett Ridge. It veers back to the northwest on Camp Rock Road (2), following Pendleton Road to Nebo Road to National Trails Highway. Central Route 1 continues on the Boulder Corridor powerline road (3) to a Union Pacific Railroad right-of-way, which it follows northeast to Afton Canyon, California. Upon exiting the canyon, the route proceeds through the Rasor OHV area, departing via Rasor Road. After Rasor Road, the route follows the Arrowhead Trail and Mead-Adelanto powerline road to the northeast, through Baker, California, and over Clark Mountain. From that point, it crosses into Nevada and continues into Primm from the southwest.

*Central Route 2*

Central Route 2 begins on the open desert floor in the Stoddard Valley OHV area. Leaving Stoddard Valley, it crosses Route 247 (1) and proceeds northeast over Daggett Ridge. It veers back to the northwest on Camp Rock Road (2), following Pendleton Road to Nebo Road to National Trails Highway. Central Route 2 continues on the Boulder Corridor powerline road (3) to a Union Pacific Railroad right-of-way, which it follows northeast to Afton Canyon, California. Upon exiting the canyon it proceeds through the Rasor OHV area, departing via Rasor Road. After Rasor Road, the Route follows the Arrowhead Trail and Mead-Adelanto powerline road to the northeast, through Baker, California, and over Clark Mountain. From that point, it joins Route 164 (9) and travels southeast. The Route proceeds on Nipton Road, California (15) and a Union Pacific Railroad right-of-way, crossing into Nevada arriving at Primm from the southeast.

*Central Route 3*

Central Route 3 begins on the open desert floor in the Stoddard Valley OHV area. Leaving Stoddard Valley, it crosses Route 247 (1) and proceeds northeast over Daggett Ridge. It veers back to the northwest on Camp Rock Road (2), following Pendleton Road to Nebo Road to National Trails Highway. Central Route 3 continues on National Trails Highway from Daggett to the southeast to Goffs Road, California (12). The Route proceeds north along the Metropolitan

District powerline road, crosses into Nevada and intersects Route 164 near Searchlight, Nevada (14). The Route crosses back into California, follows Nipton Desert Road (15) and a Union Pacific Railroad right-of-way to enter Primm, Nevada from the southeast.

#### *Central Route 4*

Central Route 4 begins on the open desert floor in the Stoddard Valley OHV area. Leaving Stoddard Valley, it crosses Route 247 (1) and proceeds northeast over Daggett Ridge. It veers back to the northwest on Camp Rock Road (2), following Pendleton Road to Nebo Road to National Trails Highway. Central Route 4 continues on National Trails Highway from Daggett to the southeast to Mountain Springs Road (13), crossing I-40 to Goffs Road, California (12). The Route proceeds north along the Metropolitan Water District powerline road, crosses into Nevada and intersects Route 164 near Searchlight, Nevada (14). The Route follows Route 164 and crosses back into California near Nipton, travels west, crossing I-15 and follows the Mead-Adelanto powerline road to enter Primm, Nevada, from the southwest.

#### *Mixed Route 1*

Mixed Route 1 begins on the open desert floor in the Stoddard Valley OHV area. It departs Stoddard Valley from the northeast, crosses Route 247 (1) and proceeds northeast over Daggett Ridge, then south on Camp Rock Road (2) to Lucerne Valley, California. From Lucerne Valley, Mixed Route 1 continues southeast on Route 247 into Yucca Valley, where it intersects Route 62 (18) and proceeds east to Twenty-Nine Palms, California. In Twenty-Nine Palms, the route leads to Amboy Road, California (19) via local roads. The Route then proceeds right on National Trails Highway to the southeast to Goffs Road (12), where it turns north along the Metropolitan Water District powerline road, traveling into Nevada and Route 164, near Searchlight, Nevada (14). Mixed Route 1 follows Nipton Desert Road (15) and a Union Pacific Railroad right-of-way into Primm, Nevada, from the southeast.

#### *Mixed Route 2*

Mixed Route 2 begins on the open desert floor in the Stoddard Valley OHV area and departs Stoddard Valley to the south. This departure from Stoddard Valley (16) follows Stoddard Wells Road toward Victorville, California, and Route 18 (17) to Lucerne Valley. From Lucerne Valley, the route continues southeast on Route 247 into Yucca Valley, where it intersects Route 62 (18)

east to Twenty-Nine Palms, and continues east on Route 62. From Route 62, Mixed Route 2 proceeds north on Iron Mountain Road (20) to Cadiz Road, California. The route follows Cadiz Road to National Trails Highway, which it follows, to the southeast, to Mountain Springs Road (13) to Goffs Road, California (12). From there, it heads north along the Metropolitan Water District powerline road, traveling into Nevada and Route 164 near Searchlight, Nevada (14). The route then follows Route 164 west into California, at Nipton, and follows the Mead-Adelanto powerline road to Primm, Nevada, from the southwest.

#### *Mixed Route 3*

Mixed Route 3 begins on the open desert floor in the Stoddard Valley OHV area. Leaving Stoddard Valley, the Route crosses Route 247 (1) and proceeds northeast over Daggett Ridge. Mixed Route 3 then veers back to the northwest on Camp Rock Road (2), following Pendleton Road to Nebo Road, to National Trails Highway. It then continues on the Boulder Corridor powerline road (3) to a Union Pacific Railroad right-of-way, which it follows northeast, toward Afton Canyon, California. Upon exiting the canyon it proceeds through the Razor OHV area, departing via Basin Road. This route picks up the Arrowhead Trail, to the west, and joins the Boulder Corridor powerline road (8), continuing on the Boulder Corridor powerline road to Route 127. The route then turns north on Route 127 (5) and follows Route 127 to Furnace Creek Road, California (6), and turns right, proceeding to Excelsior Mine Road. Mixed Route 3 then proceeds east into Nevada, on Kingston Road, to Route 161, which crosses I-15 north of Primm, Nevada. The Route intersects Old Las Vegas Boulevard South and follows local trails and roads to arrive at Primm.

#### *Mixed Route 4*

Mixed Route 4 begins on the open desert floor in the Stoddard Valley OHV area and departs Stoddard Valley from the south. This departure from Stoddard Valley (16) utilizes the Lucerne Valley Cutoff to Route 247 to Lucerne Valley, California. From Lucerne Valley, Mixed Route 4 continues southeast on Route 247 into Yucca Valley, California, where it intersects Route 62 (18) and proceeds east to Twenty-Nine Palms, California. It then proceeds east, to Vidal Junction, California, where it turns north on Route 95. Mixed Route 4 follows Route 95 north to Searchlight, Nevada (14), where it then turns west on Route 164. The route then proceeds on Route 164

back into California to the west, through Nipton, California, turning northeast on the Mead-Adelanto powerline road and entering Primm, Nevada, from the southwest.

#### *Northern Route 1*

Northern Route 1 begins on the open desert floor in the Stoddard Valley OHV area. Leaving Stoddard Valley, Northern Route 1 crosses Route 247 (1) and proceeds northeast over Daggett Ridge. It veers back to the northwest on Camp Rock Road (2), following Pendleton Road to Nebo Road to National Trails Highway. East of Daggett, Northern Route 1 leaves National Trails Highway and continues on the Boulder Corridor powerline road (3) to a Union Pacific Railroad right-of-way. Then it follows the Union Pacific Railroad right-of-way to Hacienda Drive, California (4), at which point it crosses I-15 and intersects the Boulder Corridor powerline road. Northern Route 1 then proceeds north on Route 127 (5) to Route 178, crossing into Nevada on Route 372 to Route 160, which crosses I-15 south of Las Vegas. It then intersects Old Las Vegas Boulevard South and follows local trails and roads to arrive at Primm, Nevada.

#### *Northern Route 2*

Northern Route 2 begins on the open desert floor in the Stoddard Valley OHV area. Leaving Stoddard Valley, it crosses Route 247 (1) and proceeds northeast over Daggett Ridge. It veers back to the northwest on Camp Rock Road (2), following Pendleton Road to Nebo Road to National Trails Highway. East of Daggett, Northern Route 2 leaves National Trails Highway and continues on the Boulder Corridor powerline road (3) to a Union Pacific Railroad right-of-way. It follows the Union Pacific Railroad right-of-way to Hacienda Drive, California (4), at which point it crosses I-15 and intersects the Boulder Corridor powerline road. The Northern Route 2 then crosses 127 (5), and continues on the Boulder Corridor powerline road and arrives at Primm, Nevada, from the southwest.

#### *Northern Route 3*

Northern Route 3 begins on the open desert floor in the Stoddard Valley OHV area. Leaving Stoddard Valley, it crosses Route 247 (1) and proceeds northeast over Daggett Ridge. It veers back to the northwest on Camp Rock Road (2), following Pendleton Road to Nebo Road to National Trails Highway. East of Daggett Northern Route 3 leaves National Trails Highway and continues on the Boulder Corridor powerline road (3) to a Union Pacific Railroad right-of-

way. The Route follows the Union Pacific railroad to Hacienda Drive, California (4), at which point it crosses I-15 and intersects the Boulder Corridor powerline road. Northern Route 3 proceeds north on Route 127 (5) to Furnace Creek Road, California and turns right on Furnace Creek Road (6), proceeding to Excelsior Mine Road. The Route reconnects to the Boulder Corridor powerline road (7) and continues on this road to arrive at Primm, Nevada, from the southwest.

#### *Northern Route 4*

Northern Route 4 begins on the open desert floor in the Stoddard Valley OHV area. Leaving Stoddard Valley, it crosses Route 247 (1) and proceeds northeast over Daggett Ridge. It veers back to the northwest on Camp Rock Road (2), following Pendleton Road to Nebo Road to National Trails Highway. East of Daggett Northern Route 4 leaves National Trails Highway and continues on the Boulder Corridor powerline road (3) to a Union Pacific Railroad right-of-way. It follows the Union Pacific Railroad right-of-way to Hacienda Drive, California (4), at which point it crosses I-15 and intersects the Boulder Corridor powerline road. Northern Route 4 then proceeds north on Route 127 (5) to Furnace Creek Road, California and turns right on Furnace Creek Road (6), proceeding to Excelsior Mine Road. The Route then proceeds east, on Kingston Road, to Route 161, which crosses into Nevada, and I-15 north of Primm, Nevada, intersects Old Las Vegas Boulevard South and follows local trails and roads to arrive at Primm.

#### *Southern Route 1*

Southern Route 1 begins on the open desert floor in the Stoddard Valley OHV area. It departs Stoddard Valley from the northeast, on Route 247, and proceeds to Lucerne Valley, California. From Lucerne Valley, the route continues southeast on Route 247 into Yucca Valley, California, where it intersects Route 62 (18), traveling east toward Twenty-Nine Palms, California. Southern Route 1 continues on Route 62 to Vidal Junction, California, turning north on Route 95. The route continues north on Route 95 to Searchlight, Nevada (14), and on to Henderson, Nevada. At Henderson, the route turns southwest on Route 146 to Old Las Vegas Boulevard, traveling south along local trails and roads to arrive at Primm, Nevada.

#### *Southern Route 2*

Southern Route 2 begins on the open desert floor in the Stoddard Valley OHV area and departs Stoddard Valley to the

south. This departure from Stoddard Valley (16) follows Stoddard Wells Road toward Victorville, California, and Route 18 (17), to Lucerne Valley, California. From Lucerne Valley, the route continues southeast on Route 247 into Yucca Valley, where it intersects Route 62 (18) east, toward Twenty-Nine Palms. Southern Route 1 continues east on Route 62 to Vidal Junction, California, turning north on Route 95. The route continues north on Route 95 to Searchlight, Nevada (14) and on to Henderson, Nevada. At Henderson, the route turns southwest on Route 146, to Old Las Vegas Boulevard, traveling south along local trails and roads to arrive at Primm, Nevada.

#### *Southern Route 3*

Southern Route 3 begins on the open desert floor in the Stoddard Valley OHV area and departs Stoddard Valley from the south. This departure from Stoddard Valley (16) utilizes the Lucerne Valley Cutoff to Route 247 to Lucerne Valley, California. From Lucerne Valley, the route continues southeast on Route 247, into Yucca Valley, where it intersects Route 62 (18) east, toward Twenty-Nine Palms, California. Southern Route 3 continues east on Route 62 to Vidal Junction, California, turning north on Route 95. The route continues north on Route 95 to Searchlight, Nevada (14) and on to Henderson, Nevada. At Henderson, the route turns southwest on Route 146 to Old Las Vegas Boulevard, traveling south along local trails and roads to arrive at Primm, Nevada.

#### *Southern Route 4*

Southern Route 4 begins on the open desert floor in the Stoddard Valley OHV area. It departs Stoddard Valley from the northeast and crosses Route 247 (1) and proceeds northeast over Daggett Ridge. This route then proceeds south, on Camp Rock Road (2), to Lucerne Valley, California. From Lucerne Valley, the route continues southeast on Route 247 into Yucca Valley, California, where it intersects Route 62 (18) east, toward Twenty-Nine Palms, California. Southern Route 4 continues east on Route 62 to Vidal Junction, California, turning north on Route 95. The Route continues north on Route 95 to Searchlight, Nevada (14), and on to Henderson, Nevada. At Henderson, the route turns southwest on Route 146 to Old Las Vegas Boulevard, traveling south along local trails and roads to arrive at Primm, Nevada.

#### *Southern Route 5*

Southern Route 5 begins on the open desert floor in the Stoddard Valley OHV

area. It departs Stoddard Valley from the northeast, and follows Route 247 to Lucerne Valley. From Lucerne Valley, the route continues southeast on Route 247 into Yucca Valley, where it intersects Route 62 (18) east, toward Twenty-Nine Palms, California. Southern Route 5 continues east on Route 62 to Cadiz Road, California, and turns north on Cadiz Road (21). The Route follows Metropolitan Water District powerline road (22) to Goffs Road, California (12), and proceeds east on Goffs Road to Route 95. Southern Route 5 continues north on Route 95 to Searchlight, Nevada (14), and on to Henderson, Nevada. At Henderson, the route turns southwest on Route 146, to Old Las Vegas Boulevard, traveling south along local trails and roads to arrive at Primm, Nevada.

#### **4. Closure**

a. The final closure areas are located in California and Nevada; the final route closure will involve routes of travel within both the state of California and the state of Nevada and will be in effect from 6:30 a.m. on Saturday, March 13, 2004, for a period of 24 hours or until deemed safe for the public by law enforcement authorities.

b. The entire two areas and entire final route encompassed by this event, as listed in the legal descriptions above, are closed except for Law Enforcement personnel, BLM Officials directed involved in the event, Emergency Vehicles, and all Officials involved in the event. Access routes leading to the two areas and to the final route are closed to all vehicles, animals, and people.

c. The public is welcome to attend, however, those interested in viewing the event are restricted to certain viewing locations only.

d. No vehicle stopping or parking.

#### **5. Exceptions**

The above restrictions do not apply to emergency vehicles or vehicles used by persons directed involved in this event. Authority for closure of public lands and routes of travel is found in 43 CFR 8340 Subpart 8341; 43 CFR 8360, Subpart 8364.1, and 43 CFR 2932. Persons who violate this closure order are subject to fines and or arrest as prescribed by law.

Dated: February 4, 2004.

**Harold Johnson,**

*Acting Field Manager, Barstow Field Office (CA-680).*

[FR Doc. 04-5088 Filed 3-3-04; 11:29 am]

**BILLING CODE 4310-40-P**

**DEPARTMENT OF THE INTERIOR****Bureau of Land Management****[OR-957-00-1420-BJ: GP04-0100]****Filing of Plats of Survey: Oregon/ Washington****AGENCY:** Bureau of Land Management.**ACTION:** Notice.

**SUMMARY:** The plats of survey of the following described lands were officially filed in the Oregon State Office, Portland, Oregon, on December 22, 2003.

**Willamette Meridian***Oregon*

T. 21 S., R. 8 W., accepted December 4, 2003  
T. 31 S., R. 1 W., accepted December 4, 2003

The plats of survey of the following described lands were officially filed in the Oregon State Office, Portland, Oregon, February 5, 2004.

*Oregon*

T. 20 S., R. 10 E., accepted January 20, 2004

*Washington*

T. 22 N., R. 11 W., accepted January 20, 2004  
T. 27 N., R. 3 W., accepted January 20, 2004

The plat of survey of the following described lands is scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

*Washington*

T. 2 N., R. 7 E., accepted February 10, 2004

A copy of the plats may be obtained from the Public Room at the Oregon State Office, Bureau of Land Management, 333 SW. 1st Avenue, Portland, Oregon 97204, upon required payment. A person or party who wishes to protest against a survey must file a notice that they wish to protest (at the above address) with the State Director, Bureau of Land Management, Portland, Oregon.

**FOR FURTHER INFORMATION CONTACT:** Chief, Branch of Cadastral Survey, Bureau of Land Management, (333 SW. 1st Avenue) P.O. Box 2965, Portland, Oregon 97208.

**Robert D. DeViney, Jr.,***Branch of Realty and Records Services.*

[FR Doc. 04-5010 Filed 3-4-04; 8:45 am]

**BILLING CODE 4310-33-P****DEPARTMENT OF JUSTICE****Office of the Assistant Attorney General for Civil Rights; Certification of the State of Maryland Accessibility Code Under the Americans With Disabilities Act****AGENCY:** Department of Justice.**ACTION:** Notice of certification of equivalency.

**SUMMARY:** The Department of Justice (Department) has determined that the Maryland Accessibility Code, under .05.02.02 of the Code of Maryland Regulations (COMAR), as adopted pursuant to Article 83B, section of 6-102 of the Annotated Code of Maryland (together, the Maryland law), meets or exceeds the new construction and alterations requirements of title III of the Americans with Disabilities Act of 1990 (ADA). The Department has issued a certification of equivalency, pursuant to 42 U.S.C. 12188(b)(1)(A)(ii) and 28 CFR 36.601 *et seq.*, which constitutes rebuttable evidence, in any enforcement proceeding, that a building constructed or altered in accordance with the Maryland law meets or exceeds the requirements of the ADA.

**DATES:** March 5, 2004.

**FOR FURTHER INFORMATION CONTACT:** John L. Wodatch, Chief, Disability Rights Section, Civil Rights Division, U.S. Department of Justice, 950 Pennsylvania Avenue, NW., 1425 NYA Building, Washington, DC 20530. Telephone number (800) 514-0301 (Voice) or (800) 514-0383 (TTY).

Copies of this notice are available in formats accessible to individuals with vision impairments and may be obtained by calling (800) 514-0301 (Voice) or (800) 514-0383 (TTY).

**SUPPLEMENTARY INFORMATION:****Background**

The ADA authorizes the Department of Justice, upon application by a State or local government, to certify that a State or local law that establishes accessibility requirements meets or exceeds the minimum requirements of title III of the ADA for new construction and alterations. 42 U.S.C.

12188(b)(1)(A)(ii); 28 CFR 36.601 *et seq.* Final certification constitutes rebuttable evidence, in any ADA enforcement action, that a building constructed or altered in accordance with the certified code complies with the new construction and alterations requirements of title III of the ADA.

The Maryland Department of Housing and Community Development requested that the Department of Justice (Department) certify that the Maryland Accessibility Code, under .05.02.02 of the Code of Maryland Regulations (COMAR), as adopted pursuant to Article 83B, section 6-102 of the Annotated Code of Maryland (together, the Maryland law), meets or exceeds the new construction and alterations requirements of title III of the ADA.

The Department has analyzed the Maryland law and has preliminarily determined that it meets or exceeds the new construction and alterations requirements of title III of the ADA. By letter dated May 29, 2003, the Department notified the Maryland Department of Housing and Community Development of its preliminary determination of equivalency.

On August 15, 2003, the Department published notices in the **Federal Register** announcing its preliminary determination of equivalency and requesting public comments thereon. The period for submission of written comments ended on October 15, 2003. In addition, the Department held public hearings in Ellicott City, Maryland on September 4, 2003, and in Washington, DC on October 22, 2003.

Four individuals provided comments. The commenters included government officials, disability rights advocates, and design professionals. The Department has analyzed all of the submitted comments and has consulted with the U.S. Architectural and Transportation Barriers Compliance Board.

All of the comments supported certification of the Maryland law. Based on these comments, the Department has determined that the Maryland law is equivalent to the new construction and alterations requirements of title III of the ADA. Therefore, the Department has informed the submitting official of its decision to certify the Maryland law.

**Effect of Certification**

The certification determination will be limited to the version of the Maryland law that has been submitted to the Department. The certification will not apply to amendments or interpretations that have not been submitted and reviewed by the Department.

Certification will not apply to buildings constructed by or for State or local government entities, which are subject to title II of the ADA. Nor does certification apply to accessibility requirements that are addressed by the Maryland law that are not addressed by the ADA Standards for Accessible Design.

Finally, certification does not apply to variances or waivers granted under the Maryland law. Therefore, if a builder receives a variance, waiver, modification, or other exemption from the requirements of the Maryland law for any element of construction or alterations, the certification determination will not constitute evidence of ADA compliance with respect to that element.



Dated: February 18, 2004.

**R. Alexander Acosta,**

*Assistant Attorney General for Civil Rights.*

[FR Doc. 04-4988 Filed 3-4-04; 8:45 am]

**BILLING CODE 4410-13-M**

## DEPARTMENT OF LABOR

### Office of the Secretary

#### Submission for OMB Review; Comment Request

February 26, 2004.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. chapter 35). A copy of each ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor (DOL). To obtain documentation, contact Ira Mills on 202-693-4122 (this

is not a toll-free number) or e-mail: [mills.ira@dol.gov](mailto:mills.ira@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL, Office of Management and Budget, Room 10235, Washington, DC 20503, 202-395-7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*Agency:* Employment and Training Administration.

*Type of Review:* Extension of a currently approved collection.

*Title:* ETA 29 CFR Part 29—Labor Standards for the Registration of Apprenticeship Programs.

*OMB Number:* 1205-0223.

*Frequency:* On occasion.

*Affected Public:* Business or other for-profit; individuals or households; not-for-profit institutions; Federal government; State, local, or tribal government.

*Number of Respondents:* 290,531.

*Number of Annual Responses:* 290,531.

*Estimated Time Per Response:*

Section	Frequency	Respondents	Average time per respondent	Total hours
29.3 (Apprentice) .....	One-time .....	31,956	20 minutes .....	10,546
29.6 (Apprentice) .....	One-time .....	118,786	50 minutes .....	9,859
29.5 (Sponsor) .....	One-time .....	1,688	2 hours .....	3,376
29.5 (SAC) .....	One-time .....	1,414	2 hours .....	2,828
29.7 (Sponsor) .....	One-time .....	40	50 minutes .....	3
29.12 .....	One-time .....	30	2 hours .....	60

*Total Burden Hours:* 60,826.

*Description:* Title 29 CFR part 29 sets forth labor standards to safeguard the welfare of apprentices and to extend the application of such standards by prescribing policies and procedures concerning registration of apprenticeship programs.

**Ira L. Mills,**

*Departmental Clearance Officer.*

[FR Doc. 04-4947 Filed 3-4-04; 8:45 am]

**BILLING CODE 4510-30-P**

## DEPARTMENT OF LABOR

### Office of the Secretary

#### Submission for OMB Review; Comment Request

February 26, 2004.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork

Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. Chapter 35). A copy of each ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor (DOL). To obtain documentation, contact Ira Mills on 202-693-4122 (this is not a toll-free number) or E-Mail: [mills.ira@dol.gov](mailto:mills.ira@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL, Office of Management and Budget, Room 10235, Washington, DC 20503 202-395-7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information,

including the validity of the methodology and assumptions used;

- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*Agency:* Employment and Training Administration.

*Type of Review:* Extension of a currently approved collection.

*Title:* Quick Turnaround Surveys on Workforce Investment Act Implementation.

*OMB Number:* 1205-0436.

*Frequency:* On occasion.

*Affected Public:* State, Local or Tribal Government.

*Number of Respondents:* 5,000.

*Number of Annual Responses:* 5,000.

*Estimated Time Per Response:*

## UPPER-BOUND AND LOWER-BOUND ESTIMATES OF TOTAL BURDEN HOURS PER SURVEYS

	Sample size	Number of questions	Average time per question	Aggregate burden hours per survey	Estimated number of surveys over 3 years	Total annual burden hours
Lower-Bound .....	54	10	1	9	8	72
Upper-Bound .....	250	30	3	375	20	7,500

*Total Burden Hours: 7,500.*

*Description:* ETA seeks an extension of clearance to collect data from state workforce agencies and local workforce investment areas on a quick turnaround basis. ETA proposes to conduct 8 to 20 short surveys of up to 30 questions that would provide timely information identifying the scope and magnitude of various practices or problems nationally. The surveys are needed to understand key operational issues in light of the Administration's policy priorities and the coming reauthorization of WIA and of other partner programs. Information from the surveys would be used by ETA to fulfill its obligations to develop administrative guidance, regulations and technical assistance.

**Ira L. Mills,**

*Departmental Clearance Officer.*

[FR Doc. 04-4948 Filed 3-4-04; 8:45 am]

**BILLING CODE 4510-30-P**

## DEPARTMENT OF LABOR

### Office of the Secretary

#### Submission for OMB Review; Comment Request

February 27, 2004.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. Chapter 35). A copy of each ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor (DOL). To obtain documentation, contact Ira Mills on 202-693-4122 (this is not a toll-free number) or E-Mail: [mills.ira@dol.gov](mailto:mills.ira@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL, Office of Management and Budget, Room 10235, Washington, DC 20503 202-395-7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility, and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*Agency:* Employment and Training Administration.

*Type of Review:* Extension of a currently approved collection.

*Title:* Work Application/Job Order Recordkeeping.

*OMB Number:* 1205-0001.

*Frequency:* Quarterly.

*Affected Public:* State, Local or Tribal Government.

*Number of Respondents:* 52.

*Number of Annual Responses:* 416.

*Estimated Time Per Response:* 1 hour.

*Total Burden:* 416.

*Total Annualized Capital/Start Costs:* \$0.

*Total Annual costs operating/maintaining systems or purchasing services):* \$0.

*Description:* Request is only for retention of information on work applications and job orders.

**Ira L. Mills,**

*Departmental Clearance Officer.*

[FR Doc. 04-4949 Filed 3-4-04; 8:45 am]

**BILLING CODE 4510-30-M**

## DEPARTMENT OF LABOR

### Office of the Secretary

#### Submission for OMB Review; Comment Request

February 25, 2004.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. Chapter 35). A copy of each ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor (DOL). To obtain documentation, contact Ira Mills on 202-693-4122 (this is not a toll-free number) or E-Mail: [mills.ira@dol.gov](mailto:mills.ira@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL, Office of Management and Budget, Room 10235, Washington, DC 20503 202-395-7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*Agency:* Office of the Assistant Secretary for Administration and Management.

*Type of Review:* Extension of a currently approved collection.

*Title:* Applicant Employment Background.

*OMB Number:* 1225-0072.

*Frequency:* On occasion.

*Affected Public:* Individuals or households; Federal Government.

*Number of Respondents:* 3,000.

*Number of Annual Responses:* 3,000.

*Estimated Time Per Response:* 5 minutes per response.

*Total Burden Hours:* 250 hours.

*Total Annualized capital/startup costs:* \$0.

*Total Annual Costs (operating/maintaining systems or purchasing services):* \$0.

*Description:* This survey is to be completed voluntarily by job applicants, provides information on the applicants' gender, race or ethnicity, disability, and the applicants' source of information on the job vacancy. This data will be used to evaluate the effectiveness of various recruitment methods employed by the Department of Labor and to tailor recruitment to meet equal employment opportunity objectives.

**Ira L. Mills,**

*Departmental Clearance Officer.*

[FR Doc. 04-4950 Filed 3-4-04; 8:45 am]

**BILLING CODE 4510-23-M**

## DEPARTMENT OF LABOR

### Office of the Secretary

#### Submission for OMB Review; Comment Request

February 27, 2004.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. Chapter 35). A copy of each ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor (DOL). To obtain documentation, contact Ira Mills on 202-693-4122 (this is not a toll-free number) or E-Mail: [mills.ira@dol.gov](mailto:mills.ira@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL, Office of Management and Budget, Room 10235, Washington, DC 20503 202-395-7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary

for the proper performance of the functions of the agency, including whether the information will have practical utility;

- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*Agency:* Employment and Training Administration.

*Type of Review:* Revision of a currently approved collection.

*Title:* Disability Employment Grant Program and Disability Information Technology Grant Program.

*OMB Number:* 1205-0416.

*Frequency:* On occasion; Quarterly; Annually.

*Affected Public:* Not-for-profit institutions; Business or other for-profit.

*Number of Respondents:* 16.

*Number of Annual Responses:* 144.

*Total Burden:* 1650.

*Total Annualized Capital/Start Costs:* \$0.

*Total Annual costs operating/maintaining systems or purchasing service):* \$0.

*Description:* Competitive grants are funded for one year, plus two option year periods. The grants are designed to provide innovative training and employment.

**Ira L. Mills,**

*Departmental Clearance Officer.*

[FR Doc. 04-4951 Filed 3-4-04; 8:45 am]

**BILLING CODE 4510-30-M**

## DEPARTMENT OF LABOR

### Office of the Secretary

#### Submission for OMB Review; Comment Request

February 27, 2004.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. Chapter 35). A copy of each ICR, with applicable supporting

documentation, may be obtained by contacting the Department of Labor (DOL). To obtain documentation, contact Ira Mills on 202-693-4122 (this is not a toll-free number) or e-Mail: [mills.ira@dol.gov](mailto:mills.ira@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL, Office of Management and Budget, Room 10235, Washington, DC 20503, 202-395-7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility, and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*Agency:* Occupational Safety and Health Administration.

*Type of Review:* Extension of a currently approved collection.

*Title:* Formaldehyde (1910.1048).

*OMB Number:* 1218-0145.

*Frequency:* On occasion.

*Affected Public:* Business of other for-profit; Federal Government; and State, local or tribal government.

*Number of Respondents:* 133,196.

*Number of Annual Responses:* 1,798,738.

*Estimated Time Per Response:* Varies from 5 minutes for employers to maintain exposure monitoring and medical records for each employee to 1 hour for employees to receive a medical examination.

*Total Burden Hours:* 490,412 hours.

*Total Annualized capital/startup costs:* \$0.

*Total Annual Costs (operating/maintaining systems or purchasing services):* \$52,058,424.

*Description:* The information collection requirements specified in the Formaldehyde Standard protect employees from the adverse health

effects that may result from their exposure to Formaldehyde. The major information collection requirements of the Formaldehyde Standard require employers to perform exposure monitoring to determine employees exposure to Formaldehyde, notifying employees of their Formaldehyde exposures, providing examining physicians with specific information, ensuring that employees receive a copy of their medical examination results, training, maintaining employees' exposure monitoring and medical records for specific periods, and providing access to these records by OSHA, the National Institute for Occupational Safety and Health, the affected employees, and their authorized representatives.

**Ira L. Mills,**

*Departmental Clearance Officer.*

[FR Doc. 04-4952 Filed 3-4-04; 8:45 am]

**BILLING CODE 4510-26-M**

## DEPARTMENT OF LABOR

### Office of the Secretary

#### Submission for OMB Review; Comment Request

February 25, 2004.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. Chapter 35). A copy of each ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor. To obtain documentation, contact Ira Mills on 202-693-4122 (this is not a toll-free number) or e-mail: [mills.ira@dol.gov](mailto:mills.ira@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employment and Training Administration (ETA), Office of Management and Budget, Room 10235, Washington, DC 20503, 202-395-7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*Agency:* Employment and Training Administration.

*Type of Review:* Extension of a currently approved collection.

*Title:* Labor Conditions Application and Requirements for Employers Using Nonimmigrants on H-1B Visas.

*OMB Number:* 1205-0310.

*Affected Public:* Business or other for-profit; Individuals or households; Not-for-profit institutions; Federal Government; and State, Local, or Tribal govt.

*Type of Response:* Recordkeeping; Reporting.

*Frequency:* On occasion.

*Number of Respondents:* 70,000.

*Annual Responses:* 284,800.

*Total Burden:* 280,025.

*Total Annualized Capital/Startup Costs:* \$0.

*Total Annual Costs (operating/maintaining systems or purchasing services):* \$0.

*Description:* The application form and other requirements in these regulations for employers seeking to use H-1B nonimmigrants in specialty occupations and as fashion models will permit the Department to meet its statutory responsibilities for program administration, management and oversight.

**Ira L. Mills,**

*Departmental Clearance Officer.*

[FR Doc. 04-4953 Filed 3-4-04; 8:45 am]

**BILLING CODE 4510-30-M**

## DEPARTMENT OF LABOR

### Office of the Secretary

#### Submission for OMB Review; Comment Request

February 26, 2004.

The Department of Labor (DOL) has submitted the following public

information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. Chapter 35). A copy of each ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor (DOL). To obtain documentation, contact Ira Mills on 202-693-4122 (this is not a toll-free number) or e-Mail: [mills.ira@dol.gov](mailto:mills.ira@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL, Office of Management and Budget, Room 10235, Washington, DC 20503, 202-395-7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluation whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; including the validity of the methodology and assumptions used;

- Enhance the quality, utility, and clarity of the information to be collected; and

- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*Agency:* Employment and Training Administration.

*Type of Review:* Extension of a currently approved collection.

*Title:* Title 29 CFR part 30—Equal Employment Opportunity in Apprenticeship and Training.

*OMB Number:* 1205-0224.

*Frequency:* On occasion.

*Affected Public:* Business or other for-profit; Individuals or households; Not-for-profit institutions; Federal Government; and State, Local, or Tribal govt.

*Number of Respondents:* 32,036.

*Number of Annual Responses:* 53,235.

*Estimated Time Per Response:*

Section No.	Affected public	Respondents	Frequency	Per response	Hours
30.3 .....	Apprenticeship Sponsors	1,604	One-time .....	30 min. ....	802
30.4 .....	Apprenticeship Sponsors	84	One-time .....	1 hr. ....	84
30.5 .....	Apprenticeship Sponsors	5,750	One-time .....	30 min. ....	2,875
30.6 .....	Apprenticeship Sponsors	50	One-time .....	5 hrs. ....	50
30.8 .....	Apprenticeship Sponsors	31,956	One-time .....	1 min. ....	533
30.8 .....	Apprenticeship Programs	30	One-time .....	5 min. ....	1,145
ETA 9039 .....	Apprentice .....	50	One-time .....	30 min. ....	25

*Total Burden Hours: 5,714.*

*Description:* Title 29 CFR part 30 sets forth policies and procedures to promote equality of opportunity in apprenticeship programs registered with the U.S. Department of Labor and recognized State apprenticeship agencies.

**Ira L. Mills,**

*Departmental Clearance Officer.*

[FR Doc. 04-4954 Filed 3-4-04; 8:45 am]

**BILLING CODE 4510-30-M**

## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA-W-52,656]

#### **Agere Systems, Inc., Including Contract Workers of Novellus Systems, Inc., Allentown, PA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance**

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on October 7, 2003, applicable to workers of Agere Systems, Inc., Allentown, Pennsylvania. The notice was published in the **Federal Register** on November 6, 2003 (68 FR 62833). The certification was amended on November 3, 2003, to correct the impact from August 15, 2002, to August 30, 2003. The notice was published in the **Federal Register** on November 26, 2003 (68 FR 66493).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information shows that contract workers of Novellus Systems, Inc. were employed at Agere Systems, Inc., at the Allentown, Pennsylvania location of the subject firm.

Based on these findings, the Department is amending this certification to include contract workers of Novellus Systems, Inc. working at Agere Systems, Inc., Allentown, Pennsylvania.

The intent of the Department's certification is to include all workers

employed at Agere Systems, Inc. who were adversely affected by increased imports of integrated circuits.

The amended notice applicable to TA-W-52,656 is hereby issued as follows:

All workers of Agere Systems, Inc., including contract workers of Novellus Systems, Inc., Allentown, Pennsylvania, who became totally or partially separated from employment on or after August 30, 2003, through November 3, 2005, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed in Washington, DC this 10th day of February, 2004.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 04-4965 Filed 3-4-04; 8:45 am]

**BILLING CODE 4510-30-P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA-W-52,577]

#### **Allen-Edmonds Shoe Corporation, Milwaukee, WI; Notice of Revised Determination on Reconsideration Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance**

By letter dated January 9, 2004, a petitioner requested administrative reconsideration regarding Alternative Trade Adjustment Assistance (ATAA). The certification was signed on November 21, 2003. The notice was published in the **Federal Register** on January 16, 2004 (69 FR 2624).

In the initial investigation the workers were denied ATAA since it was determined that the skills of the subject worker group are easily transferable to other positions in the local area.

The petitioner alleges in the request for reconsideration that the skills of the workers at the subject firm are not easily transferable.

Additional investigation has determined that the workers possess skills that are not easily transferable. A significant number or proportion of the

worker group are age 50 years or over. Competitive conditions within the industry are adverse.

### Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that the requirements of section 246 of the Trade Act of 1974, as amended, have been met for workers at the subject firm.

In accordance with the provisions of the Act, I make the following certification:

All workers of Allen-Edmonds Shoe Corporation, Milwaukee, Wisconsin (TA-W-52,577) who became totally or partially separated from employment on or after August 14, 2002 through November 21, 2005, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under section 246 of the Trade Act of 1974.

Signed in Washington, DC this 13th day of February, 2004.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 04-4967 Filed 3-4-04; 8:45 am]

**BILLING CODE 4510-30-P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA-W-53,955]

#### **American Steel and Aluminum Corp., Middletown, PA; Notice of Termination of Investigation**

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 7, 2004, in response to a worker petition filed by a company official on behalf of workers at American Steel & Aluminum Corporation, Middletown, Pennsylvania.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 12th day of February, 2004.

**Elliott S. Kushner,**  
*Certifying Officer, Division of Trade  
Adjustment Assistance.*

[FR Doc. 04-4974 Filed 3-4-04; 8:45 am]

BILLING CODE 4510-30-P

## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA-W-53,972]

#### **Colonial Metals Co., Columbia, PA; Notice of Termination of Investigation**

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 9, 2004, in response to a petition filed by a company official on behalf of workers at Colonial Metals Company, Columbia, Pennsylvania.

The petitioner has requested that the petition be withdrawn. Consequently the investigation has been terminated.

Signed at Washington, DC, this 17th day of February 2003.

**Richard Church,**  
*Certifying Officer, Division of Trade  
Adjustment Assistance.*

[FR Doc. 04-4972 Filed 3-4-04; 8:45 am]

BILLING CODE 4510-30-P

## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA-W-53,977]

#### **Crown Risdon USA, Inc., Risdon-AMS, Danbury, CT; Notice of Termination of Investigation**

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 12, 2004, in response to a petition filed by the company on behalf of workers at Crown Risdon USA, Inc., Risdon-AMS, Danbury, Connecticut.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 3rd day of February, 2004.

**Elliott S. Kushner,**  
*Certifying Officer, Division of Trade  
Adjustment Assistance.*

[FR Doc. 04-4971 Filed 3-4-04; 8:45 am]

BILLING CODE 4510-30-P

## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA-W-50,569]

#### **Datex-Ohmeda, Inc., Including Leased Workers of Kelly Services, Louisville, CO; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance**

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 21, 2003, applicable to workers of Datex-Ohmeda, Inc., Louisville, Colorado. The notice was published in the **Federal Register** on March 10, 2003 (68 FR 11410).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information shows that leased workers of Kelly Services were employed at Datex-Ohmeda, Inc. to produce pulse oximeters at the Louisville, Colorado location of the subject firm.

Based on these findings, the Department is amending this certification to include leased workers of Kelly Services working at Datex-Ohmeda, Inc., Louisville, Colorado.

The intent of the Department's certification is to include all workers employed at Datex-Ohmeda, Inc. who were adversely affected by a shift in production to India.

The amended notice applicable to TA-W-50,569 is hereby issued as follows:

All workers of Datex-Ohmeda, and including leased workers of Kelly Services employed at Datex-Ohmeda, Louisville, Colorado, who became totally or partially separated from employment on or after January 14, 2002, through February 21, 2005, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed in Washington, DC this 6th day of February, 2004.

**Richard Church,**  
*Certifying Officer, Division of Trade  
Adjustment Assistance.*

[FR Doc. 04-4969 Filed 3-4-04; 8:45 am]

BILLING CODE 4510-30-P

## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA-W-52,972]

#### **Exfo Gnubi Products Group, Inc., Now Known as Exfo America, Inc., Gnubi Communications, L.P., Gnubi Communications, Inc., Addison, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance**

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on October 17, 2003, applicable to workers of Exfo Gnubi Products Group, Inc., Addison, Texas. The notice was published in the **Federal Register** on November 6, 2003 (68 FR 62834). The certification was amended on November 21, 2003, to reflect that workers wages were reported under two separated unemployment insurance (UI) tax accounts for Gnubi Communications, L.P. and Gnubi Communications, Inc. The notice was published in the **Federal Register** on December 29, 2003 (68 FR 74973).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of telecommunications test equipment.

New information shows that during 2003, Exfo Gnubi Products Group, Inc. was consolidated into Exfo America, Inc. and is now known as Exfo America, Inc. Workers separated from employment at the subject firm had their wages reported under a separate unemployment insurance (UI) tax account for Exfo America, Inc.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Exfo Gnubi Products Group, Inc., Addison, Texas who were adversely affected by a shift in production of telecommunications test equipment to Canada.

The amended notice applicable to TA-W-52,972 is hereby issued as follows:

All workers of Exfo Gnubi Products Group, Inc., now known as Exfo America, Inc., Gnubi Communications, L.P., and Gnubi Communications, Inc., Addison, Texas, who became totally or partially separated from employment on or after September 9, 2002, through October 17, 2005, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed in Washington, DC this 6th day of February, 2004.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 04-4970 Filed 3-4-04; 8:45 am]

BILLING CODE 4510-30-P

## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA-W-52,623]

#### **Five Rivers Electronic Innovations, LLC, Greeneville, TN; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Negative Determination Regarding Eligibility To Apply for Alternative Trade Adjustment Assistance**

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Negative Determination Regarding Eligibility to Apply for Alternative Trade Adjustment Assistance on October 1, 2003, applicable to workers of Five Rivers Electronic Innovations, LLC, Greeneville, Tennessee. The notice was published in the **Federal Register** on November 28, 2003 (68 FR 66879).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of color televisions and parts and are not separately identifiable by product line.

New findings show that there was a previous certification, TA-W-38,281, issued on January 24, 2001, for workers of Five Rivers Electronic Innovations, LLC, Greeneville, Tennessee who were engaged in employment related to the production of color televisions and parts. That certification expired January 24, 2003. To avoid an overlap in worker group coverage, the certification is being amended to change the impact date from August 15, 2002, to January 25, 2003, for workers of the subject firm.

The amended notice applicable to TA-W-52,623 is hereby issued as follows:

All workers of Five River Electronic Innovations, LLC, Greeneville, Tennessee, who became totally or partially separated from employment on or after January 25, 2003, through October 1, 2005, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

I further determine that all workers of Five River Electronic Innovations, LLC,

Greeneville, Tennessee are denied eligibility to apply for alternative trade adjustment assistance under section 246 of the Trade Act of 1974.

Signed in Washington, DC this 4th day of February, 2004.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 04-4966 Filed 3-4-04; 8:45 am]

BILLING CODE 4510-30-P

## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA-W-53,293 and TA-W-53,293B]

#### **Harriet and Henderson Yarns, Inc., Bladen Plant, Clarkton, NC and Harriet and Henderson Yarns, Inc., Fort Payne Distribution Center, Fort Payne, AL**

#### **Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance**

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on December 3, 2003, applicable to workers of Harriet and Henderson Yarns, Inc., Bladen Plant Clarkton, North Carolina. The notice was published in the **Federal Register** on January 16, 2004 (69 FR 2625).

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of yarn.

The company reports that worker separations occurred at the Fort Payne Distribution Center, Fort Payne, Alabama location of the subject firm. The Fort Payne, Alabama location served as the warehouse/distribution center for the subject firms' production facilities in Clarkton, North Carolina and Cedartown, Georgia.

Based on these findings, the Department is amending the certification to include workers of Harriet and Henderson Yarns, Inc., Fort Payne Distribution Center, Fort Payne, Alabama.

The intent of the Department's certification is to include all workers of Harriet and Henderson Yarns, Inc. who were adversely affected by increased imports.

The amended notice applicable to TA-W-53,293 is hereby issued as follows:

All workers of Harriet and Henderson Yarns, Inc., Bladen Plant, Clarkton, North Carolina (TA-W-53,293), who became totally or partially separated from employment on or after October 17, 2002, and all workers of Harriet and Henderson Yarns, Inc., Cedartown Plant, Cedartown, Georgia (TA-W-53,293A) and Harriet and Henderson Yarns, Inc., Fort Payne Distribution Center, Fort Payne, Alabama (TA-W-53,293B) who became totally or partially separated on or after October 22, 2002, through December 3, 2005, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974 and are also eligible to apply for alternative trade adjustment under section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 11th day of February, 2004.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 04-4961 Filed 3-4-04; 8:45 am]

BILLING CODE 4510-30-P

## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA-W-51,880]

#### **InFocus Corporation, Formerly InFocus Systems, Inc., Including Temporary Workers of Adecco Staffing, Wilsonville, OR; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance**

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on June 24, 2003, applicable to workers of InFocus Corporation, formerly InFocus Systems, Inc., Wilsonville, Oregon. The notice was published in the **Federal Register** on July 10, 2003 (68 FR 41180).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information shows that temporary workers of Adecco Staffing were employed at InFocus Corporation, formerly InFocus Systems, Inc. at the Wilsonville, Oregon location of the subject firm.

Based on these findings, the Department is amending this certification to include temporary workers of Adecco Staffing working at InFocus Corporation, formerly InFocus Systems, Inc., Wilsonville, Oregon.

The intent of the Department's certification is to include all workers employed at InFocus Corporation, formerly InFocus Systems, Inc., who



were adversely affected by a shift in production to Malaysia.

The amended notice applicable to TA-W-51,880 is hereby issued as follows:

All workers of InFocus Corporation, formerly InFocus Systems, Inc., including temporary workers of Adecco Staffing, Wilsonville, Oregon, who became totally or partially separated from employment on or after May 8, 2002, through June 24, 2005, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed in Washington, DC this 11th day of February, 2004.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 04-4968 Filed 3-4-04; 8:45 am]

**BILLING CODE 4510-30-P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA-W-50,735]

#### **Kincaid Furniture Co., Inc., Plant 8, Currently Known as Plant 18, Lenoir, NC; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance**

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273), the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 3, 2003, applicable to workers of Kincaid Furniture Company, Inc. located in Lenoir, North Carolina. The notice was published in the **Federal Register** on March 19, 2003 (68 FR 13332).

At the request of petitioners, the Department reviewed the certification for workers of the subject firm producing dining room chairs and tables. The petitioners report, and the company confirms, that the plant from which the workers are continuing to be separated is currently identified as Plant 18. This plant was formerly known as Plant 8, Lenoir, North Carolina.

The Department is amending the certification to clarify that all workers of Kincaid Furniture Company, Inc., Plant 8, currently known as Plant 18, Lenoir, North Carolina are eligible to apply for TAA.

The amended notice applicable to TA-W-50,735 is hereby issued as follows:

All workers of Kincaid Furniture Company, Inc., Plant 8, currently known as Plant 18, Lenoir, North Carolina, who became totally or partially separated from employment on or after January 27, 2002, through March 3,

2005, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 17th day of February, 2004.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 04-4978 Filed 3-4-04; 8:45 am]

**BILLING CODE 4510-30-P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA-W-40,417]

#### **NTN-Bower Corporation, Hamilton, Alabama**

#### **Notice of Revised Determination on Remand**

The United States Court of International Trade (USCIT) granted the Secretary of Labor's motion for voluntary remand for further investigation of the negative determination in *Former Employees of NTN-Bower Corporation v. U.S. Secretary of Labor* (Court No. 02-00315).

The Department's initial denial of the petition for employees of NTN-Bower Corporation, Hamilton, Alabama was issued on March 27, 2002. The decision was published on April 5, 2002 in the **Federal Register** (67 FR 16441). The denial was based on the fact that imports did not contribute importantly to worker separations at the subject firm. The petitioners did not request administrative reconsideration.

By letter dated April 25, 2002 to the U.S. Court of International Trade, petitioners requested judicial review. The Department requested, and was granted, a voluntary remand. On October 3, 2002, the Department issued a Notice of Negative Determination on Remand. The Notice was published in the **Federal Register** on October 22, 2002 (67 FR 64919). The denial was based on the fact that the major customer did not import tapered roller bearings during the relevant time period.

In the current voluntary remand investigation, the Department obtained new information and clarification from the company regarding the production process and company imports during the relevant time period.

The new information revealed that earlier in the relevant time period, the subject company made bearing forgings (component parts stamped out of steel plates), finished the forgings, and

assembled the forgings into bearings; later in the relevant time period, the subject company had replaced bearing forging production with imported unfinished forgings, and then finished and assembled the bearings at NTN-Bower, Hamilton, Alabama. The subject worker group produced bearings and component parts, and are not separately identifiable by product line.

### Conclusion

After careful review of the additional facts obtained on remand, I conclude that there were increased imports of articles like or directly competitive with those produced by the subject firm that contributed importantly to the worker separations and sales or production declines at the subject facility. In accordance with the provisions of the Trade Act, I make the following certification:

All workers of NTN-Bower Corporation, Hamilton, Alabama who became totally or partially separated from employment on or after October 18, 2000, through two years from the issuance of this revised determination, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC this 25th day of February, 2004.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 04-4980 Filed 3-4-04; 8:45 am]

**BILLING CODE 4510-30-P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA-W-52, 981]

#### **OCÉ Groupware Technology, Inc. (OGT), A Subsidiary of Océ—USA Holding, Inc., A Member of the Océ Group, A Subsidiary of Océ N.V., Boise, ID**

#### **Notice of Negative Determination Regarding Application for Reconsideration**

By application postmarked December 1, 2003, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice applicable to workers of Océ Groupware Technology, Inc. (OGT), a subsidiary of Océ—USA Holding, Inc., a member of the Océ Group, a subsidiary of Océ N.V., Boise, Idaho was signed on October 10, 2003,

and published in the **Federal Register** on November 6, 2003 (68 FR 62832).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The TAA petition was filed on behalf of workers at Océ Groupware Technology, Inc. (OGT), a subsidiary of Océ—USA Holding, Inc., a member of the Océ Group, a subsidiary of Océ N.V., Boise, Idaho engaged in development of software. The petition was denied because the petitioning workers did not produce an article within the meaning of Section 222 of the Act.

The petitioner contends that the Department erred in its interpretation of work performed at the subject facility as a service and refers to the production of software as a final “master” package product. As a proof, the petitioner attached a description and price lists of the software, and an example of a Software License and Transfer Agreement dated May, 1999.

A company official was contacted for clarification in regard to the nature of the work performed at the subject facility. The official stated that workers of Océ Group, a subsidiary of Océ N.V., Boise, Idaho are software engineers, engaged in IT solution and development, and administrative workers, engaged in sales, support, marketing and product planning. The official further clarified that the subject facility develops a unique software which is transmitted from the subject facility to Itasca, Illinois for software “duplicating” or stamping on to CD-roms in response to orders received. The CDs are further packaged and shipped to customers. The company official reported that the development stage of software is currently in the process of being outsourced to Belgium. The company official further stated that development process which is done in Belgium will consist of engineers developing updated and new versions of the software which further will be transmitted either to the Netherlands for stamping and delivering to European and Asian markets, or to the Itasca, Illinois facility in the United States for further stamping and distribution to customers.

The sophistication of the work involved is not an issue in ascertaining whether the petitioning workers are eligible for trade adjustment assistance, but rather only whether they produced an article within the meaning of section 222 of the Trade Act of 1974.

Software design, developing and coding are not considered production of an article within the meaning of Section 222 of the Trade Act. Petitioning workers do not produce an “article” within the meaning of the Trade Act of 1974. Formatted electronic software and codes are not tangible commodities, that is, marketable products, and they are not listed on the Harmonized Tariff Schedule of the United States (HTS), as classified by the United States International Trade Commission (USITC), Office of Tariff Affairs and Trade Agreements, which describes articles imported to the United States.

To be listed in the HTS, an article would be subject to a duty on the tariff schedule and have a value that makes it marketable, fungible and interchangeable for commercial purposes. Although a wide variety of tangible products are described as articles and characterized as dutiable in the HTS, informational products that could historically be sent in letter form and that can currently be electronically transmitted, are not listed in the HTS. Such products are not the type of employment work products that customs officials inspect and that the TAA program was generally designed to address.

The petitioner also alleges that imports impacted layoffs, asserting that because workers lost their jobs due to a transfer of job functions to Belgium, petitioning workers should be considered import impacted.

The petitioning worker group is not considered to have engaged in production, thus any foreign transfer of their job duties is irrelevant within the context of eligibility for trade adjustment assistance.

#### Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 12th day of February, 2004.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 04-4962 Filed 3-4-04; 8:45 am]

BILLING CODE 4510-30-P

#### DEPARTMENT OF LABOR

##### Employment and Training Administration

[TA-W-52,855]

##### **ON Semiconductor, East Greenwich Division, Including Leased Workers of Kelly Services, East Greenwich, RI; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance**

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on October 30, 2003, applicable to workers of ON Semiconductor, East Greenwich Division, including leased workers of Kelly Services, East Greenwich, Rhode Island. The notice was published in the **Federal Register** on November 28, 2003. (68 FR 66879).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. The workers produce power management and standard analog semiconductor components.

The review shows that the company provided information in response to questions from the Department with respect to Alternative Trade Adjustment Assistance (ATAA) that were not addressed in the decision document. The Department has determined that this information together with semiconductor industry information warrants ATAA certification for workers of the subject firm.

Therefore, the Department is amending the certification to reflect its finding.

The amended notice applicable to TA-W-52,855 is hereby issued as follows:

All workers of ON Semiconductor, East Greenwich Division, including leased workers of Kelly Services, East Greenwich, Rhode Island, who became totally or partially separated from employment on or after September 3, 2002, through October 30, 2005, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974, and are also eligible to apply for Alternative Trade Adjustment Assistance under section 246 of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 17th day of February, 2004.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 04-4977 Filed 3-4-04; 8:45 am]

BILLING CODE 4510-30-P

## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA-W-52,925]

#### **SKF USA, Inc., Altoona Division, Including Leased Workers of Motion Industries, Inc., Altoona, PA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance**

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on November 3, 2003, applicable to workers of SKF USA, Inc., Altoona Division, Altoona, Pennsylvania. The notice was published in the **Federal Register** on November 28, 2003 (68 FR 66879).

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. New information shows that leased workers of Motion Industries, Inc. were employed at SKF USA, Inc., Altoona Division at the Altoona, Pennsylvania location of the subject firm.

Based on these findings, the Department is amending this certification to include leased workers of Motion Industries, Inc. working at SKF USA, Inc., Altoona Division, Altoona, Pennsylvania.

The intent of the Department's certification is to include all workers employed at SKF USA, Inc., Altoona Division, who were adversely affected by increased imports.

The amended notice applicable to TA-W-52,925 is hereby issued as follows:

All workers of SKF USA, Inc., Altoona Division, including leased workers of Motion Industries, Inc., Altoona, Pennsylvania, who became totally or partially separated from employment on or after September 11, 2002, through November 3, 2005, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 17th day of February, 2004.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 04-4976 Filed 3-4-04; 8:45 am]

BILLING CODE 4510-30-P

## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA-W-52,831]

#### **SPX Dock Products, United Dominion Industries, Inc., Mechanical Dock Lever Division, Carrollton, TX**

#### **Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Negative Determination Regarding Eligibility To Apply for Alternative Trade Adjustment Assistance**

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on October 1, 2003, applicable to workers of SPX Dock Products, Mechanical Dock Lever Division, Carrollton, Texas. The notice was published in the **Federal Register** on November 28, 2003 (68 FR 66880).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of safety lock restraints.

New information shows that some workers separated from employment at the subject firm had their wages reported under a separate unemployment insurance (UI) tax account for United Dominion Industries, Inc.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of SPX Dock Products, United Dominion Industries, Inc., Mechanical Dock Lever Division, Carrollton, Texas, who were adversely affected by a shift in production to Mexico.

The amended notice applicable to TA-W-52,831 is hereby issued as follows:

All workers of SPX Dock Products, United Dominion Industries, Inc., Mechanical Dock Lever Division, Carrollton, Texas, who became totally or partially separated from employment on or after September 3, 2002, through October 1, 2005, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974, and

I further determine that all workers of SPX Dock Products, United Dominion Industries, Inc., Mechanical Dock Lever Division, Carrollton, Texas, are denied eligibility to apply for alternative trade adjustment assistance under section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 6th day of February, 2004.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 04-4963 Filed 3-4-04; 8:45 am]

BILLING CODE 4510-30-P

## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA-W-53,928]

#### **Tech-Tran Corp., Rancocas, NJ; Notice of Termination of Investigation**

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 2, 2004, in response to a petition filed on behalf of workers at Tech-Tran Corporation, Rancocas, New Jersey. The workers produced electrical transformers.

Two of the petitioning workers were separated from the subject firm more than one year before the date of the petition. Section 223(b) of the Act specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of the petition. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 20th day of February, 2004.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 04-4975 Filed 3-4-04; 8:45 am]

BILLING CODE 4510-30-P

## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA-W-52,665]

#### **Textron Fastening Systems, a Wholly-Owned Subsidiary of Textron, Inc., PFPD Plant, Tooling Department, Rockford, IL; Notice of Termination of Reconsideration**

By application of November 5, 2003, a petitioner requested administrative reconsideration of the Department's negative determination regarding

eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The Department's initial determination was signed on September 4, 2003, and published in the **Federal Register** on October 10, 2003 (68 FR 58719). On December 17, 2003, the Department issued a Notice of Affirmative Determination Regarding Application for Reconsideration, which was published in the **Federal Register** on January 26, 2004 (69 FR 3606).

By letter of February 11, 2004, the petitioner withdrew the request for reconsideration. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 12th day of February, 2004.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 04-4964 Filed 3-4-04; 8:45 am]

BILLING CODE 4510-30-P

## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA-W-42,302]

#### **Trends Clothing Corporation a.k.a. Trends International Including Leased Workers of Fidelity United, Miami, FL**

#### **Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance**

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on November 8, 2002, applicable to workers of Trends Clothing Corporation, a.k.a. Trends International, Miami, Florida. The notice was published in the **Federal Register** on November 27, 2002 (67 FR 70970).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information shows that leased workers of Fidelity United were engaged in activities related to the production of junior's sportswear at Trends Clothing Corporation, a.k.a. Trends International at the Miami, Florida location of the subject firm.

Based on these findings, the Department is amending this certification to include leased workers of Fidelity United working at Trends Clothing Corporation, a.k.a. Trends International, Miami, Florida.

The intent of the Department's certification is to include all workers employed at Trends Clothing Corporation, a.k.a. Trends International, who were adversely affected by increased imports.

The amended notice applicable to TA-W-42,302 is hereby issued as follows:

All workers of Trends Clothing Corporation, a.k.a. Trends International, including leased workers of Fidelity United working at Trends Clothing Corporation, a.k.a. Trends International, Miami, Florida, who became totally or partially separated from employment on or after October 9, 2001, through November 8, 2004, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC this 18th day of February, 2004.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 04-4979 Filed 3-4-04; 8:45 am]

BILLING CODE 4510-30-P

## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA-W-53,963]

#### **YKK (USA), Inc., Macon, GA; Notice of Termination of Investigation**

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 8, 2004, in response to a petition filed by workers at YKK (USA), Inc., Macon, Georgia.

The petition has been deemed invalid. The petitioners worked in three separate subdivisions of the firm.

Consequently, further investigation would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 13th day of February, 2004.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 04-4973 Filed 3-4-04; 8:45 am]

BILLING CODE 4510-30-P

## DEPARTMENT OF LABOR

### Employment Standards Administration; Wage and Hour Division

#### **Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions**

General wage determination decisions of the Secretary of Labor are issued in

accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing

Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Futher information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employmnt Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3014, Washington, DC 20210.

#### **Modification to General Wage Determination Decisions**

The number of the decisions listed to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and related Acts" being modified are listed by Volume and State. Dates of publicaiton in the **Federal Register** are in parentheses following the decisions being modified.

#### *Volume II*

##### **New Hampshire**

NH030001 (Jun. 13, 2003)  
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NH030003 (Jun. 13, 2003)  
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##### **New Jersey**

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##### **Rhode Island**

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### General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at [www.access.gpo.gov/davisbacon](http://www.access.gpo.gov/davisbacon). They are also available electronically by subscription to the Davis-Bacon Online Service (<http://davisbacon.fedworld.gov>) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1-800-363-2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help Desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402; (202) 512-1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder

of the year, regular weekly updates will be distributed to subscribers.

Signed in Washington, DC this 26th day of February, 2004.

**Terry Sullivan,**

*Acting Chief, Branch of Construction Wage Determinations.*

[FR Doc. 04-4656 Filed 3-4-04; 8:45 am]

**BILLING CODE 4510-27-M**

## NATIONAL COUNCIL ON DISABILITY

### Cultural Diversity Advisory Committee Meeting (Teleconference)

**TIMES AND DATES:** 4 p.m. e.d.t., April 7, 2004.

**PLACE:** National Council on Disability, 1331 F Street, NW., Suite 850, Washington, DC.

**AGENCY:** National Council on Disability (NCD).

**STATUS:** All parts of this meeting will be open to the public. Those interested in participating in this meeting should contact the appropriate staff member listed below. Due to limited resources, only a few telephone lines will be available for the call.

**AGENDA:** Roll call, announcements, reports, new business, adjournment.

**FOR FURTHER INFORMATION CONTACT:** Geraldine (Gerrie) Drake Hawkins, Ph.D., Program Analyst, NCD, 1331 F Street, NW., Suite 850, Washington, DC 20004; (202) 272-2004 (voice), (202) 272-2074 (TTY), (202) 272-2022 (fax), [ghawkins@ncd.gov](mailto:ghawkins@ncd.gov).

**CULTURAL DIVERSITY ADVISORY COMMITTEE MISSION:** The purpose of NCD's Cultural Diversity Advisory Committee is to provide advice and recommendations to NCD on issues affecting people with disabilities from culturally diverse backgrounds. Specifically, the committee will help identify issues, expand outreach, infuse participation, and elevate the voices of underserved and unserved segments of this nation's population that will help NCD develop Federal policy that will address the needs and advance the civil and human rights of people from diverse cultures.

Dated: March 1, 2004.

**Ethel D. Briggs,**

*Executive Director.*

[FR Doc. 04-4896 Filed 3-4-04; 8:45 am]

**BILLING CODE 6820-MA-P**

## NATIONAL COUNCIL ON DISABILITY

### Youth Advisory Committee Meeting (Conference Call)

**TIME AND DATE:** 12 p.m. e.d.t., April 30, 2004.

**PLACE:** National Council on Disability, 1331 F Street, NW., Suite 850, Washington, DC 20004.

**AGENCY:** National Council on Disability (NCD).

**STATUS:** All parts of this conference call will be open to the public. Those interested in participating in this conference call should contact the appropriate staff member listed below.

**AGENDA:** Roll call, announcements, reports, new business, adjournment.

**FOR FURTHER INFORMATION CONTACT:** Geraldine Drake Hawkins, Ph.D., Program Analyst, National Council on Disability, 1331 F Street, NW., Suite 850, Washington, DC 20004; (202) 272-2004 (voice), (202) 272-2074 (TTY), (202) 272-2022 (fax), [ghawkins@ncd.gov](mailto:ghawkins@ncd.gov) (e-mail).

**YOUTH ADVISORY COMMITTEE MISSION:** The purpose of NCD's Youth Advisory Committee is to provide input into NCD activities consistent with the values and goals of the Americans with Disabilities Act.

Dated: March 1, 2004.

**Ethel D. Briggs,**

*Executive Director.*

[FR Doc. 04-4895 Filed 3-4-04; 8:45 am]

**BILLING CODE 6820-MA-P**

## NUCLEAR REGULATORY COMMISSION

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** U.S. Nuclear Regulatory Commission (NRC).

**ACTION:** Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

**SUMMARY:** The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* NRC Form 136, "Security Termination Statement"; NRC Form 237, "Request for Access Authorization"; NRC Form 277, "Request for Visit".

2. *Current OMB approval number:* 3150-0049, NRC Form 136; 3150-0050, NRC Form 237; 3150-0051, NRC Form 277.

3. *How often the collection is required:* On occasion.

4. *Who is required or asked to report:* NRC Form 136—any employee of approximately 68 licensees and contractors who have been granted an NRC access authorization; NRC Form 237—any employee of approximately 68 licensees and 7 contractors who will require an NRC access authorization; NRC Form 277—any employee of 2 current NRC contractors who (1) holds an NRC access authorization, and (2) needs to make a visit to NRC, other contractors/licensees or government agencies in which access to classified information will be involved or unescorted area access is desired.

5. *The number of annual respondents:* NRC Form 136: 75; NRC Form 237: 75; NRC Form 277: 2.

6. *The number of hours needed annually to complete the requirement or request:* NRC Form 136: 23; NRC Form 237: 84; NRC Form 277: 1.

7. *Abstract:* The NRC Form 136 affects the employees of licensees and contractors who have been granted an NRC access authorization. When access authorization is no longer needed, the completion of the form apprises the respondents of their continuing security responsibilities. The NRC Form 237 is completed by licensees, NRC contractors or individuals who require an NRC access authorization. The NRC Form 277 affects the employees of contractors who have been granted an NRC access authorization and require verification of that access authorization and need-to-know in conjunction with a visit to NRC or another facility.

Submit, by May 4, 2004, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O-1F23, Rockville, MD 20852. OMB clearance requests are available at the NRC World Wide Web site: <http://www.nrc.gov/public-involve/>

[doc-comment/omb/index.html](http://doc-comment/omb/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T-5F52, Washington, DC 20555-0001, by telephone at (301) 415-7233, or by Internet electronic mail at [infocollects@nrc.gov](mailto:infocollects@nrc.gov).

Dated at Rockville, Maryland, this 1st day of March, 2004.

For the Nuclear Regulatory Commission.

**Beth C. St. Mary,**

*Acting NRC Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 04-4917 Filed 3-4-04; 8:45 am]

BILLING CODE 7590-01-P

## NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-317 and 50-318]

### Calvert Cliffs Nuclear Power Plant, Units Nos. 1 and 2; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR-53 and DPR-69 issued to Calvert Cliffs Nuclear Power Plant, Inc. (the licensee) for operation of the Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2 located in Calvert County, Maryland.

The proposed amendments would extend the implementation date for Amendment Nos. 261 and 238 for Calvert Cliffs Units 1 and 2, respectively to July 1, 2004. The changes to the reactor pressure vessel pressure-temperature limit cooldown rates that were approved by Amendment Nos. 261 and 238 are more conservative than the plants existing rates and result in a longer cooldown period. The existing cooldown rates are acceptable through the end of 2004.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in Title 10

of the Code of Federal Regulations (10 CFR), Section 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. involve a significant increase in the probability or consequences of an accident previously evaluated; or

The proposed amendment extends the implementation period specified in Item 3 of Amendment Nos. 261 and 238 from 120 days to July 1, 2004. Since the existing reactor pressure vessel pressure-temperature limit cooldown rates are valid through the end of 2004, there is no technical or safety issue associated with this request. The proposed amendment is purely administrative.

Therefore, the proposed change does not involve a significant increase in the probability or consequence of an accident previously evaluated

2. create the possibility of a new or different [kind] of accident from any accident previously evaluated; or

The proposed amendment extends the implementation period specified in Item 3 of Amendment Nos. 261 and 238 from 120 days to July 1, 2004. Since the existing reactor pressure vessel pressure-temperature limit cooldown rates are valid through the end of 2004, there is no technical or safety issue associated with this request. The proposed amendment is purely administrative.

This request does not involve a change in the operation of the plant and no new accident initiation mechanism is created by the proposed change. The proposed change does not involve a physical alteration of the plant.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. involve a significant reduction in a margin of safety.

The margin of safety is maintained during the period of extended implementation because the existing reactor pressure vessel pressure-temperature limit cooldown rates are valid through to end of 2004.

The proposed amendment extends the implementation period specified in Item 3 of Amendment Nos. 261 and 238 from 120 days to July 1, 2004. Since the existing reactor pressure vessel pressure-temperature limit cooldown rates are valid through the end of 2004, there is no technical or safety issue associated with this request. The proposed amendment is purely administrative.

Therefore, this proposed change does not significantly reduce [a] margin of safety.



The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to

the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/doc-collections/cfr/>. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestors/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention

and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff; (3) e-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, [HEARINGDOCKET@NRC.GOV](mailto:HEARINGDOCKET@NRC.GOV); or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415-1101, verification number is (301) 415-1966.

A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and it is requested that copies be transmitted either by means of facsimile transmission to 301-415-3725 or by email to [OGCMailCenter@nrc.gov](mailto:OGCMailCenter@nrc.gov). A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(i)-(viii).

For further details with respect to this action, see the application for amendment dated February 25, 2004, which is available for public inspection at the Commission's PDR, located at One White Flint North, File Public Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1-800-397-4209, 301-415-4737, or by e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov).

Dated at Rockville, Maryland, this 1st day of March 2004.

For the Nuclear Regulatory Commission.

**Guy S. Vissing,**

*Senior Project Manager, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 04-4916 Filed 3-4-04; 8:45 am]

BILLING CODE 7590-01-P

## NUCLEAR REGULATORY COMMISSION

[Docket No. 72-8]

### Calvert Cliffs Nuclear Power Plant; Notice of Docketing of the Materials License SNM-2505 Amendment Application for the Calvert Cliffs Independent Spent Fuel Storage Installation

By letter dated December 12, 2003, Calvert Cliffs Nuclear Power Plant, Inc.

(CCNPP), submitted an application to the Nuclear Regulatory Commission (NRC or the Commission) in accordance with 10 CFR part 72 requesting an amendment of the Calvert Cliffs independent spent fuel storage installation (ISFSI) license (SNM-2505) for the ISFSI located in Calvert County, Maryland. CCNPP is requesting Commission approval to amend SNM-2505 to add the NUHOMS-32P as an optional design to the existing NUHOMS-24P design for dry storage of spent nuclear fuel.

This application was docketed under 10 CFR part 72; the ISFSI Docket No. is 72-8 and will remain the same for this action. The amendment of an ISFSI license is subject to the Commission's approval.

The Commission may issue either a notice of hearing or a notice of proposed action and opportunity for hearing in accordance with 10 CFR 72.46(b)(1) or, if a determination is made that the amendment does not present a genuine issue as to whether public health and safety will be significantly affected, take immediate action on the amendment in accordance with 10 CFR 72.46(b)(2) and provide notice of the action taken and an opportunity for interested persons to request a hearing on whether the action should be rescinded or modified.

For further details with respect to this amendment, see the application dated December 12, 2003, which is publically available in the records component of NRC's Agencywide Documents Access and Management System (ADAMS). The NRC maintains ADAMS, which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at <http://www.nrc.gov/reading-rm/adams.html>. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1-800-397-4209, 301-415-4737 or by e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov).

Dated at Rockville, Maryland, this 26th day of February, 2004.

For the Nuclear Regulatory Commission.

**Stephen C. O'Connor,**

*Sr. Project Manager, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 04-4918 Filed 3-4-04; 8:45 am]

BILLING CODE 7590-01-P

## NUCLEAR REGULATORY COMMISSION

### Draft Regulatory Guide; Issuance, Availability

This notice is reprinted to correct the title of Draft Regulatory Guide DG-7004. The original notice was published on February 25, 2004.

The Nuclear Regulatory Commission (NRC) has issued for public comment a proposed revision of a guide in its Regulatory Guide Series. Regulatory guides are developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft guide is temporarily identified by its task number, DG-7004, which should be mentioned in all correspondence concerning this draft guide. Draft Regulatory Guide DG-7004, "Establishing Quality Assurance Programs for Packaging Used in Transport of Radioactive Material," is the proposed Revision 2 of Regulatory Guide 7.10. This revision is being developed to provide guidance on developing Quality Assurance Programs with respect to the transport of radioactive materials in Type B and fissile material packages.

This draft guide has not received complete staff approval and does not represent an official NRC staff position.

Comments may be accompanied by relevant information or supporting data. Written comments may be submitted by mail to the Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555; or they may be hand-delivered to the Rules and Directives Branch, Office of Administration, at 11555 Rockville Pike, Rockville, MD. Copies of comments received may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Comments will be most helpful if received by April 25, 2004.

You may also provide comments via the NRC's interactive rulemaking Web site through the NRC home page (<http://www.nrc.gov>). This site provides the ability to upload comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking web site, contact Ms. Carol Gallagher, (301) 415-5905; e-mail [CAG@NRC.GOV](mailto:CAG@NRC.GOV). For technical information about Draft Regulatory Guide DG-7004, contact Mr. J. Pearson

at (301) 415-1985 (e-mail [JJP@NRC.GOV](mailto:JJP@NRC.GOV)).

Although a deadline is given for comments on these draft guides, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the NRC's Public Document Room, 11555 Rockville Pike, Rockville, MD; the PDR's mailing address is USNRC PDR, Washington, DC 20555; telephone (301) 415-4737 or (800) 397-4209; fax 301-415-3548; e-mail [pdr@nrc.gov](mailto:pdr@nrc.gov). Requests for single copies of draft or final regulatory guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Reproduction and Distribution Services Section, or by fax to 301-415-2289; e-mail [distribution@nrc.gov](mailto:distribution@nrc.gov). Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them. (5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 25th day of February 2004.

For the Nuclear Regulatory Commission.

**Mabel Lee,**

*Director, Program Management, Project Development and Support, Office of Nuclear Regulatory Research.*

[FR Doc. 04-4919 Filed 3-4-04; 8:45 am]

BILLING CODE 7590-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-27804]

### Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

February 27, 2004.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the

application(s) and/or declaration(s) should submit their views in writing by March 22, 2004, to the Secretary, Securities and Exchange Commission, Washington, DC 20549-0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After March 22, 2004 the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

#### System Energy Resources, Inc. (70-10182)

System Energy Resources, Inc. ("SERI"), 1340 Echelon Parkway, Jackson, Mississippi 39213, an electric utility subsidiary of Entergy Corporation, a registered holding company, has filed a declaration under sections 6(a), 7, 9(a), 10, 12(b) and 12(d) of the Act and rules 44, 45 and 54 under the Act.

By prior Commission order dated December 23, 1988 (HCAR No. 24791), SERI was authorized to sell and lease back from certain trusts acting as lessors ("Lessors"), on a long-term net lease basis, all approximate 11.5% aggregate ownership interest ("Undivided interests") in Unit No. 1 of the Grand Gulf Steam Electric Generating Station ("Grand Gulf 1") in two substantially identical, but entirely separate, transactions. SERI now has an approximate 78.5% undivided ownership interest and an approximate 11.5% leasehold interest in Grand Gulf I. The remaining 10% of Grand Gulf I is owned by an electric cooperative, South Mississippi Electric Power Association. The purchase price of the Undivided Interests was \$500 million, of which approximately \$64,898,000 was provided by the equity contributions of two owner participants in the two Lessor trusts and approximately \$435,102,000 was provided by loans from a group of interim lenders ("Interim Borrowings").

By subsequent order dated April 13, 1989 (HCAR No. 24861), SERI's financing subsidiary, GG1A Funding Corporation ("Funding Corporation"), was authorized to issue \$435,102,000 of Secured Lease Obligation Bonds ("Original Bonds") in an underwritten public offering in two series, consisting of \$163,666,000, principal amount due 2004, Series 11.07% Bonds and

\$271,436,000, principal amount due 2014, Series 11.50% Bonds. The proceeds from the sale of the Original Bonds were applied to refunding of the Interim Borrowings.

Finally, by order dated January 14, 1994 (HCAR No. 25974), a new SERI financing subsidiary, GG1B Funding Corporation ("New Funding Corporation"), was authorized to issue an additional \$435,102,000 million of Secured Lease Obligation Bonds ("Original Refunding Bonds") in an underwritten public offering in two series, consisting of \$356,056,000, principal amount due 2011 ("Series 7.43% Bonds") and \$79,046,000, principal amount due 2014 ("Series 8.20% Bonds"). The proceeds from the sale of the Original Refunding Bonds were applied to refund the Original Bonds.

SERI now proposes to cause New Funding Corporation or a comparable entity to issue not in excess of \$293,093,025 of additional Secured Lease Obligation Bonds in one of more separate series ("New Refunding Bonds"), through December 31, 2005 ("Authorization Period"). The New Refunding Bonds will be issued under the New Funding Corporation's Collateral Trust Indenture dated as of January 1, 1994, as amended ("Indenture"), among New Funding Corporation, SERI and Deutsche Bank Trust Company Americas, as trustee ("Trustee"), or a comparable instrument in order to refund the Original Refunding Bonds. Likewise the New Refunding Bonds will be structured and issued under the documents and procedures applicable to the issuance of the Original Refunding Bonds.

The proceeds from the sale of the New Refunding Bonds, together with funds provided by SERI and/or the Lessors, will be applied to the cost of redeeming the Original Refunding Bonds and may be applied to meet associated issuance costs. Series 7.43 Bonds were first optionally redeemable on January 15, 2004 at 102.477%. Series 8.20 Bonds were first optionally redeemable on January 15, 2004 at 104.100%.

The New Refunding Bonds may be issued in one or more series bearing interest at various fixed rates. However, the interest rate on the New Refunding Bonds will not exceed at the time of issuance, the greater of (a) 500 basis points over U.S. Treasury securities having a remaining term comparable to the term of the New Refunding Bonds to be issued and (b) a spread over U.S. Treasury securities that is consistent with similar securities of comparable credit quality and maturities issued by other companies. Neither the term of the

New Refunding Bonds nor the amortization schedule will extend beyond the current term of the leases of the Undivided Interests, which expire on July 15, 2015. For certain purposes, however, at the time of the refunding of the Original Refunding Bonds, SERI may seek to extend the current term of the leases and adjust its lease payments as appropriate, provided that any extension does not exceed its operating license.

The New Refunding Bonds will be subject to redemption upon certain terminations of the leases at a redemption price equal to the unpaid principal amount, plus accrued interest to the redemption date. Other redemption and sinking fund provisions, as well as fees and expenses, will be determined by negotiation. The New Refunding Bonds will be structured and issued under the documents and pursuant to the procedures applicable to the issuance of the Original Refunding Bonds or comparable documents having similar terms and provisions.

The proceeds of the sale of the New Refunding Bonds will be loaned by the New Funding Corporation to the Lessors, and the Lessors will issue lessor notes ("Lessor Notes") to the New Funding Corporation under the terms of two trust indentures, deeds of trust, mortgages, security agreements and assignments of facility leases, dated as of December 1, 1988 ("Lease Indentures"), as supplemented from time-to-time. The Lessors in turn will apply the proceeds to repayment of similar Lessor Notes issued in 1994 to secure the Original Refunding Bonds, and the New Funding Corporation will repay the Original Refunding Bonds. SERI is unconditionally obligated to make payments under the Lease in amounts that will be at least sufficient to provide for scheduled payments of the principal of and interest on the Lessor Notes, which amounts, in turn, will be sufficient to provide for scheduled payments of the principal of, and the interest on, the New Refunding Bonds.

Neither the New Refunding Bonds nor the associated Lessor Notes will be direct obligations of, or guaranteed by, SERI. However, under certain circumstances, SERI may assume all, or a portion of, the Lessor Notes. The New Refunding Bonds will be secured by the Lessor Notes, which will be held by the Trustee under the Indenture. Each Lessor Note will, in turn, be secured by, among other things (a) a lien on and security interest in the Undivided Interest of the Lessor issuing the Lessor Note and (b) certain of the rights of such

Lessor under its Lease with SERI, including the right to receive the basic rent and certain other amounts payable by SERI.

Upon the occurrence of certain events of default under the Indenture, subject to certain exceptions, the Trustee may declare all New Refunding Bonds to be immediately due and payable. The New Funding Corporation's obligations under the Indenture may be discharged prior to the maturities of New Refunding Bonds in whole, or in part, by depositing with the Trustee sufficient funds to meet related principal, interest and premium obligations as they become due or paying down the Lessor Notes of a corresponding series of New Refunding Bonds.

As an alternative to using New Refunding Bonds issued by a New Funding Corporation, SERI may choose to use a trust structure in which one or more pass through statutory business trusts ("Business Trust") would be established to hold the Lessor Notes issued under the Lease Indentures. In lieu of issuing New Refunding Bonds, the trust would issue certificates evidencing preferred beneficial ownership interests in the trusts ("Trust Certificates"). If such a trust structure is used, concurrently with the issuance of any series of Trust Certificates, each Business Trust will invest the proceeds in the Lessor Notes, which will be the sole asset of the Business Trust, and payments under the Lessor Notes will be the only revenue of the Business Trust. The Trust Certificates will not be the direct obligations of, or guaranteed by SERI. However, the Trust Certificates will be supported by the Lessor Notes, which will be held and secured by the Business Trust. In addition, under certain circumstances, SERI may assume all, or a portion of, the Lessor Notes.

The Trust Certificates may be issued in one or more series bearing dividends at various fixed rates. However, the dividend rates on any series of Trust Certificates will not exceed at the time of issuance the greater of (a) 500 basis points over the yield to maturity of a U.S. Treasury security having a remaining term comparable to the term of such series, and (b) a rate that is consistent with similar securities of comparable credit quality and maturities issued by other companies. Dividends on the Trust Certificates will be made periodically and to the extent funds are legally available for such purpose, but may be made subject to terms that allow the Business Trust to defer dividend payments for specified periods. The Trust Certificates will be subject to redemption upon certain terminations of the Leases at a

redemption price equal to their principal amount, plus accrued dividends to the redemption date. Each series of Trust Certificates will have such other rights, preferences and priorities, including additional redemption provisions, as may be designated in the instrument creating such series and established by negotiation. Any associated placement, underwriting or selling agent fees, commission, discounts or upfront fees will also be established by negotiation.

SERI shall not cause the sale of the New Refunding Bonds or the Trust Certificates unless (a) the estimated present value savings derived from the net difference between interest payments on a new issue of comparable securities and those securities refunded is, on an after-tax basis, greater than the present value of all redemption and issuing costs, assuming an appropriate discount rate, determined on the basis of the then estimated after-tax cost of capital of Entergy and its subsidiaries, consolidated, or (b) SERI shall have notified the Commission of the terms and conditions of the proposed refinancing transaction by post-effective amendment and obtained appropriate supplemental authorization from the Commission to consummate the transactions.

SERI represents that all times during the Authorization Period, SERI and Entergy will each maintain common equity of at least 30% of total capitalization (based on the financial statements filed for the most recent quarterly report on Form 10-Q or annual report on Form 10-K); and that no securities may be issued by SERI in reliance upon the authorization that may be granted by the Commission in this matter, unless (1) the security to be issued by SERI, if rated, is rated investment grade ("Investment Grade"); (2) all outstanding securities of SERI that are rated are rated Investment Grade; and (3) all outstanding securities of Entergy that are rated are rated Investment Grade (collectively, "Investment Grade Ratings Criteria"). For purposes of this provisions, a security will be deemed to be rated "Investment Grade" if it is rated investment grade by Moody's Investors Services, Standard & Poor's Fitch Ratings or any other nationally recognized statistical rating organization, as that term is used in paragraphs (c)(2)(vi)(E), (F), and (H) of rule 15c3-1 under the Securities Exchange Act of 1934. SERI further requests that the Commission reserve jurisdiction over the issuance of any security for which at any time one or

more of the Investment Grade Ratings Criteria are not satisfied.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**  
*Deputy Secretary.*

[FR Doc. 04-4831 Filed 3-4-04; 8:45 am]

BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49334; File No. SR-CBOE-2004-01]

### Self-Regulatory Organizations; Order Granting Approval of Proposed Rule by the Chicago Board Options Exchange, Incorporated Relating to the UMA Calculation for the CBOE Hybrid System

February 27, 2004.

On January 8, 2004, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> to allow the appropriate Index Floor Procedure Committee ("IFPC") to vary the component weightings of the Ultimate Matching Algorithm ("UMA") formula by product. On January 20, 2004, the Exchange submitted amendment No. 1 to the proposed rule change.<sup>3</sup> The proposed rule change, as amended, was published for comment in the **Federal Register** on January 28, 2004.<sup>4</sup> The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

The Exchange currently trades equity options on the CBOE Hybrid System ("Hybrid System")<sup>5</sup> and recently commenced trading of index options and ETF options on Hybrid.<sup>6</sup> The Exchange trades on Hybrid index

options and options on ETFs pursuant to the existing Hybrid rules applicable to equity options.

CBOE Rule 6.45A governs the priority and allocation of trades on the Hybrid System, and contains the UMA allocation model, which is a weighted formula that incorporates and blends the concepts of parity (Component A) and size prorata distribution (Component B). With respect to equity option trading, UMA currently assigns equal weighting percentages to Components A and B. Currently, all products under the jurisdiction of each floor procedure committee ("FPC") must utilize the same UMA weighting percentages (i.e., Components A and B must be weighted the same in all products under that FPC's jurisdiction). The Exchange proposes to permit the appropriate index FPC ("IFPC") to vary the weighting percentages of Components A and B by index or ETF option product.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of section 6 of the Act,<sup>7</sup> and the rules and regulations thereunder applicable to a national securities exchange.<sup>8</sup> In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,<sup>9</sup> which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest. The Commission believes that the proposal may allow for more competitive quoting, by permitting the IFPC to take into account disparate sized trading crowds trading the various index option or ETF option products. Further, the Commission believes that the proposed rule change may enhance competition to improve liquidity for that subset of such products that are generally less liquid.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change (SR-CBOE-2004-01), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

[FR Doc. 04-4904 Filed 3-4-04; 8:45 am]

BILLING CODE 8010-01-P

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Letter from Stephen Youhn, Counsel, CBOE, to Deborah Flynn, Assistant Director, Division of Market Regulation, Commission, dated January 20, 2004. In Amendment No. 1, CBOE replaced in its entirety the original proposed rule filing.

<sup>4</sup> See Securities Exchange Act Release No. 49108 (January 21, 2004), 69 FR 4187.

<sup>5</sup> The Hybrid System merges the electronic and open outcry trading models, offering CBOE market makers the ability to stream electronically their own market quotes. See Securities Exchange Act Release No. 47959 (May 30, 2003), 68 FR 34441 (June 9, 2003) ("Hybrid Release").

<sup>6</sup> See Securities Exchange Act Release No. 48953 (December 18, 2003), 68 FR 75004 (December 29, 2003) (order approving SR-CBOE-2003-57).

<sup>7</sup> 15 U.S.C. 78f(b).  
<sup>8</sup> In approving the proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> 15 U.S.C. 78s(b)(2).

<sup>11</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49341; File No. SR-CBOE-2004-08]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Incorporated To Establish a Fee Cap of \$75,000 Per Month for Member Firms on All Firm Proprietary and Firm Facilitation Trading in CBOE Products, To Reinstate the Prospective Fee Reduction Program, and To Credit DPM P/A Linkage Order Transaction Fees

March 1, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup>, and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 2, 2004, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On February 23, 2004, the Exchange filed Amendment No. 1 to the proposed rule change. The proposed rule change, as amended, has been filed by the CBOE as establishing or changing a due, fee, or other charge, pursuant to section 19(b)(3)(A)(ii)<sup>3</sup> of the Act and Rule 19b-4(f)(2)<sup>4</sup> thereunder, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to make several changes to its Fee Schedule to (1) establish a fee cap of \$75,000 per month for member firms on all firm proprietary and firm facilitation trading in CBOE products; (2) reestablish the

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>4</sup> 17 CFR 240.19b-4(f)(2).

Prospective Fee Reduction Program for February and March 2004; and (3) credit DPMs for transaction fees they incur in executing outbound "principal acting as agent" ("P/A") orders under the intermarket linkage program. The text of the proposed rule change is available at the CBOE and at the Commission.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

#### 1. Purpose

**Fee Cap.** The purpose of the proposed rule change is to establish a monthly fee cap of \$75,000 per CBOE member organization<sup>5</sup> on all firm proprietary and firm facilitation trading across all CBOE products. CBOE stated that the fee cap in this proposal is functionally equivalent to File No. SR-Phlx-2003-61, which the Philadelphia Stock Exchange ("Phlx") submitted effective upon filing on August 29, 2003,<sup>6</sup> in which the Phlx established a monthly fee cap of \$50,000 for specified transaction charges by specified member organizations.

In addition, as the Phlx did in SR-Phlx-2003-61, the CBOE proposes to adopt a license fee of \$0.10 per contract side for transactions in all licensed products other than the S&P 100® Index

Options (OEX)<sup>7</sup> (collectively, the "licensed products") that will be imposed on transactions in these products by member organizations that reach the \$75,000 monthly fee cap described above. Thus, when a CBOE member organization exceeds the \$75,000 cap on the fees described above, the organization will be charged \$75,000 plus the license fee of \$0.10 per contract side for any transactions in licensed products in addition to those transactions that were included in reaching the \$75,000 level. In other words, the \$0.10 per contract side license fee is in addition to the proposed \$75,000 per month cap, if the cap is reached, on the products described above.

**Prospective Fee Reduction Program.** In recognition of high trading volume and positive financial results for the first six months of this fiscal year, the Exchange proposes to reimplement a Prospective Fee Reduction Program, as has previously been done.<sup>8</sup> Under the renewed program, CBOE Market-Makers (as defined in CBOE Rule 8.1) will have their transaction fees reduced from standard rates by \$.02 per contract side. In addition, the CBOE will reduce all floor brokerage fees by \$.003 per contract side. These reductions will be in effect for February and March 2004 only. During this time, the Exchange will continue to monitor its financial results to determine whether the Prospective Fee Reduction Program should be continued, modified, or eliminated.

**Credits to DPM for Fees Relating to Duplicate Linkage Transactions.** Under the intermarket Linkage, CBOE DPMs are required in certain circumstances to send a P/A order to another exchange, in order to obtain the National Best Bid or Offer ("NBBO") price for their customers. The DPM pays transaction fees to the other exchange as well as the OCC to execute this P/A order at the other exchange. Then, under the Linkage procedure, when the DPM receives a fill of its P/A order from the other exchange, the CBOE DPM must then retrade the order back to their customer, again resulting in transaction fees, this time from CBOE and the OCC. Thus, the Linkage procedure's requirement to retrade means that DPMs

who send such P/A orders to other exchanges incur duplicate transaction and Options Clearing Corporation ("OCC") fees on P/A orders that substantially increase the costs of such transactions for the DPMs. To help offset these additional costs, the Exchange proposes a two-phased relief. First, the CBOE proposes to rebate all CBOE transaction and trade match fees related to the orders that CBOE DPMs fulfill by sending P/A transactions to other exchanges (*i.e.*, the fees from the "retrade"). At current rates, this is \$0.24 per contract.

Second, in order to help offset the Linkage costs that the DPMs are assessed on P/A orders by the OCC and the other exchanges, the CBOE will credit CBOE DPMs an additional 50% of the CBOE transaction and trade match fees related to each outbound P/A transactions. At current rates, this is \$0.12 per contract. This second rebate will be funded by the amount of total transaction and trade match fees that CBOE receives from incoming P/A orders from other exchanges ("incoming P/A fees"), and the aggregate amount rebated in the second rebate will be limited to no more than the total amount of incoming P/A fees.

#### 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with section 6(b) of the Act,<sup>9</sup> in general, and furthers the objectives of section 6(b)(4) of the Act<sup>10</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among Exchange members.

### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change, as amended, has become effective pursuant to section 19(b)(3)(A)(ii) of the

<sup>5</sup> This proposal applies to member organizations for orders for the proprietary account of any member or non-member broker dealer that derives more than 35% of its annual, gross revenues from commissions and principal transactions with customers. Member organizations will be required to verify this amount to the Exchange by certifying that they have reached this threshold and by submitting a copy of their annual report, which was prepared in accordance with Generally Accepted Accounting Principles ("GAAP"). In the event that a member organization has not been in business for one year, the most recent quarterly reports, prepared in accordance with GAAP, will be accepted. As part of this proposal, this footnote will be included in the CBOE Fee Schedule.

<sup>6</sup> See Securities Exchange Act Release No. 48459 (September 8, 2003), 68 FR 54034 (September 15, 2003).

<sup>7</sup> Currently, the most actively traded option classes in this category include options on the S&P 500® Index (SPX), the NASDAQ 100® Index Tracking Stock™ (QQQ) the CBOE Mini-NDX Index (MNX™), the Nasdaq-100® Index (NDX), the Dow Jones Industrial Average (DJX), DIAMONDS® (DIA), and the Russell 2000® Index (RUT).

<sup>8</sup> See *e.g.*, Securities Exchange Act Release No. 46266 (July 25, 2002), 67 FR 49969 (August 1, 2002).

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(4).

Act<sup>11</sup> and Rule 19b-4(f)(2)<sup>12</sup> thereunder, because it changes a fee imposed by the Exchange. At any time within 60 days of the filing of the proposed rule change, as amended, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.<sup>13</sup>

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Comments may also be submitted electronically at the following e-mail address: [rule-comments@sec.gov](mailto:rule-comments@sec.gov). All comment letters should refer to File No. SR-CBOE-2004-08. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR-CBOE-2004-08 and should be submitted by March 26, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04-4906 Filed 3-4-04; 8:45 am]

BILLING CODE 8010-01-P

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49339; File No. SR-NASD-2003-196]

##### **Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval to a Proposed Rule Change by the National Association of Securities Dealers, Inc. To Modify Fees for Persons That Are Not NASD Members Using the Financial Information Exchange ("FIX") Protocol To Connect to Nasdaq**

February 27, 2004.

On December 29, 2003, the National Association of Securities Dealers, Inc. ("NASD") through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to modify fees for NASD members using the Financial Information Exchange ("FIX") protocol to connect to Nasdaq. The proposed rule change was published for comment in the **Federal Register** on January 23, 2004.<sup>3</sup> The Commission received no comment letters on the proposal. This order approves the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.<sup>4</sup> Specifically, the Commission believes that the proposed rule change is consistent with the provisions of section 15A<sup>5</sup> and 15A(b)(5) of the Act,<sup>6</sup> in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons

using any facility or system which the NASD operates or controls. Under the modified fee schedule, firms with existing FIX circuits may continue to use them at current prices, however Nasdaq will no longer offer non-Nasdaq members the option of using FIX through CTCI or FIX-only circuits.<sup>7</sup>

Nasdaq represents that FIX connectivity has not proved as popular among firms as has extranet connectivity. As stated above, while the proposed rule change will permit firms with FIX circuits to continue to use them at current prices, Nasdaq has represented that it believes the more economical extranet connectivity is likely to be the preferred method. The Commission therefore believes that the proposed rule change is likely to have a minimal impact on firms' connectivity to the Nasdaq, and further that the proposed rule change will not cause any disruption to firms currently using FIX connectivity.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,<sup>8</sup> that the proposed rule change (File No. SR-NASD-2003-196) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04-4905 Filed 3-4-04; 8:45 am]

BILLING CODE 8010-01-P

#### SOCIAL SECURITY ADMINISTRATION

##### **Agency Information Collection Activities: Emergency Request, Proposed Request, Comment Request and Notice of OMB Approval**

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Pub. L. 104-13, the Paperwork Reduction Act of 1995, effective October 1, 1995. The information collection packages that may be included in this notice are for new information collections, approval of existing information collections, revisions to OMB-approved information collections, and extensions (no change) of OMB-approved information collections.

<sup>7</sup> As of January 1, 2004, Nasdaq stopped offering new subscribers that are Nasdaq members the option of using FIX through CTCI or FIX-only circuits. See Securities Exchange Act Release No. 49092 (January 16, 2004), 69 FR 3408 (January 23, 2004).

<sup>8</sup> 15 U.S.C. 78s(b)(2).

<sup>9</sup> 17 CFR 200.30-3(a)(12).

<sup>14</sup> 17 CFR 200.30-3(a)(12).

<sup>15</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 49091 (January 16, 2004), 69 FR 3407 (January 23, 2004).

<sup>4</sup> In approving this proposed rule change, the Commission notes that it has considered its impact on efficiency, competition, and capital formation.

15 U.S.C. 78c(f).

<sup>5</sup> 15 U.S.C. 78o-3.

<sup>6</sup> 15 U.S.C. 78o-3(b)(5).

<sup>11</sup> 15 U.S.C. 78(s)(b)(3)(A)(ii).

<sup>12</sup> 17 CFR 240.19b-4(f)(2).

<sup>13</sup> See 15 U.S.C. 78s(b)(3)(C). For purposes of calculating the 60-day abrogation period, the Commission considers the period to commence on February 23, 2004, the date the CBOE filed Amendment No. 1.



SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer. The information can be mailed and/or faxed to the individuals at the addresses and fax numbers listed below: (OMB),

Office of Management and Budget,  
Attn: Desk Officer for SSA,  
New Executive Building, Room 10235,  
725 17th St., NW.,  
Washington, DC 20503,  
Fax: 202-395-6974.

(SSA),  
Social Security Administration,  
DCFAM,

Attn: Reports Clearance Officer,  
1338 Annex Building,  
6401 Security Blvd.,  
Baltimore, MD 21235,  
Fax: 410-965-6400.

I. SSA is requesting emergency consideration within 2 weeks of publication of the information collection listed below.

Youth Transition Process Demonstration Evaluation Data Collection—0960-NEW. To further the President's New Freedom Initiative goal of increasing employment of individuals with disabilities, SSA has awarded seven cooperative agreements for the purpose of developing service delivery systems to assist youth with disabilities to successfully transition from school to work. SSA is funding two coordinated contracts to provide (1) technical assistance and (2) an evaluation. SSA will work with the Evaluation Contractor to use the results to conduct a net outcome evaluation to determine the long-term effectiveness of the interventions, impacts and benefits of the demonstration. Evaluation data will be used by the projects to improve the efficiency of the project's operations; use of staff; linkages between the project and the agencies through which comprehensive services are arranged; and specific aspects of service delivery to better meet the needs of the targeted population. This type of project is authorized by sections 1110 and 234 of the Social Security Act. The respondents will be youth with disabilities who have enrolled in the project.

*Type of Request:* New Collection.  
*Number of Respondents:* 5,000.  
*Frequency of Response:* 4.  
*Average Burden Per Response:* 15 minutes.

*Estimated Annual Burden:* 5,000 hours.

II. The information collections listed below are pending at SSA and will be submitted to OMB within 60 days from the date of this notice. Therefore, your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410-965-0454 or by writing to the address listed above.

1. *Supplemental Statement Regarding Farming Activities of Persons Living Outside the U.S.A.—0960-0103.* Form SSA-7163A-F4 is used by SSA to collect needed information whenever a Social Security beneficiary or claimant reports work on a farm outside the U.S. The information is used to make a determination for work deduction purposes. The respondents are Social Security beneficiaries or claimants who are engaged in farming activities outside the U.S.

*Type of Request:* Extension of an OMB-approved information collection.  
*Number of Respondents:* 1,000.  
*Frequency of Response:* 1.  
*Average Burden Per Response:* 60 minutes.

*Estimated Annual Burden:* 1,000 hours.

2. *Notice Regarding Substitution of Party Upon Death of Claimant-Reconsideration of Disability Cessation—20 CFR 404.907-.921 and 416.1407-.1421—0960-0351.* SSA uses form SSA-770 to obtain information from substitute parties regarding their intention to pursue the appeals process for an individual who has died. The respondents are such parties.

*Type of Request:* Extension of an OMB-approved information collection.  
*Number of Respondents:* 1,200.  
*Frequency of Response:* 1.  
*Average Burden Per Response:* 5 minutes.

*Estimated Annual Burden:* 100 hours.

3. *Disability Hearing Officer's Decision—20 CFR 404.917 and 416.1417—0960-0441.* The Social Security Act requires that SSA provide an evidentiary hearing at the reconsideration level of appeal for claimants who have received an initial or revised determination that a disability did not exist or has ceased. Based on the hearing, the disability hearing officer (DHO) completes form

SSA-1207 and all applicable supplementary forms (which vary depending on the type of claim). The DHO uses the information in documenting and preparing the disability decision. The form will aid the DHO in addressing the crucial elements of the case in a sequential and logical fashion. The respondents are DHOs in the State Disability Determination Services (DDS).

*Type of Request:* Extension of an OMB-approved information collection.  
*Number of Respondents:* 100,000.  
*Frequency of Response:* 1.  
*Average Burden Per Response:* 45 minutes.

*Estimated Annual Burden:* 75,000 hours.

4. *Work History Report—20 CFR 404.1512 and 416.912—0960-0578.* The information collected by form SSA-3369 is needed to determine disability by the State DDS. The information will be used to document an individual's past work history. The respondents are applicants for disability benefits.

*Type of Request:* Extension of an OMB-approved information collection.  
*Number of Respondents:* 1,000,000.  
*Frequency of Response:* 1.  
*Average Burden Per Response:* 30 minutes.

*Estimated Annual Burden:* 500,000 hours.

5. *Medical History and Disability Report, Disabled Child—20 CFR 416.912—0960-0577.* The Social Security Act requires claimants to furnish medical and other evidence to prove they are disabled. Form SSA-3820 is used to obtain various types of information about a child's condition, his/her treating sources and/or other medical sources of evidence. The i3820 allows the claimant for disability benefits to go online and furnish the same information. The Electronic Disability Collect System (EDCS) is an internal collection process. Using EDCS, Field Office (FO) employees key information provided by applicants or their representatives onto EDCS screens, which establish a data base that the adjudicating component can access. Both the i3820 and EDCS screens have been designed to capture the same information as the revised paper version of the SSA-3820. The information collected on the SSA-3820 is needed for the determination of disability by the State DDSs. The respondents are applicants for Title XVI (SSI) child disability benefits.

*Type of Request:* Extension of an OMB-approved information collection.

	Number of respondents	Frequency of response	Average burden per response (hours)	Estimated annual burden (hours)
SSA-3820 .....	366,000	1	1	366,000
i3820 .....	2,500	1	2	5,000
EDCS .....	157,000	1	1	157,000

*Total Estimated Annual Burden:* 228,000 hours.

6. *Annual Registration Statement Identifying Separated Participants with Deferred Benefits, Schedule SSA—0960-0606.* Schedule SSA is a form filed annually as part of a series of pension plan documents required by section 6057 of the IRS Code.

Administrators of pension benefit plans are required to report specific information on future plan benefits for those participants who left plan coverage during the year. SSA maintains the information until a claim for Social Security benefits has been approved. At that time, SSA notifies the beneficiary of his/her potential eligibility for payments from the private pension plan. The respondents are administrators of pension benefit plans, or their service providers employed to prepare the Schedule SSA on behalf of the pension

benefit plan. Below are the estimates of the cost and hour burdens for completing and filing Schedule SSA(s). We have used an average to estimate the hour burden. However, the burden may be greater or smaller depending on whether the respondent is a large or small pension benefit plan and how many Schedule SSA's are filed in a given year.

*Type of Request:* Extension of an OMB-approved information collection.

*Number of Respondents:* 1.

*Average Burden Per Response:* 2.5 hours.

*Estimated Annual Burden:* 220,000 hours.

*Estimated Annual Cost Burden for All Respondents:* \$12,194,400.

7. *State Agency Report of Obligations for SSA Disability Programs and Addendum, SSA-4513; Time Report of Personnel Services for Disability*

*Determination Services, SSA-4514; and State Agency Schedule of Equipment Purchased for SSA Disability Programs, SSA-871-0960-0421.* SSA uses the information collected by forms SSA-4513 and 4514 to conduct a detailed analysis and evaluation of the costs incurred by the State Disability Determination Services (DDSs) in making the disability determination for SSA. The data is also used to determine funding levels for each DDS. SSA uses the information collected by form SSA-871 to budget and account for expenditures of funds for equipment purchases by the State DDSs that administer the disability determination program. The respondents are DDSs that have the responsibility for making disability determinations for SSA.

*Type of Request:* Extension of an OMB-approved information collection.

	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
SSA-4513 .....	52	4	90	312
SSA-4514 .....	52	4	90	312
SSA-871 .....	52	4	30	104

*Total Estimated Annual Burden:* 728 hours.

8. *Summary of Evidence—20 CFR 416.1407-0960-0430.* Form SSA-887 is used by the State Disability Determination Services (DDS) to provide claimants with a list of medical/vocational reports pertaining to their disability. The form will aid claimants in reviewing the evidence in their folders and will also be used by hearing officers in preparing for and conducting hearings. The respondents are State DDSs that make disability determinations.

*Type of Request:* Extension of an OMB-approved information collection.

*Number of Respondents:* 49,000.

*Frequency of Response:* 1.

*Average Burden Per Response:* 15 minutes.

*Estimated Annual Burden:* 12,250 hours.

9. *Wage Reports and Pension Information—20 CFR 422.122(b)—0960-0547.* The information collected by form

OR-418P is used by SSA to identify the requester of pension plan information and to confirm that the individual is entitled to the data SSA provides. The respondents are requesters of pension plan information.

*Type of Request:* Extension of an OMB-approved information collection.

*Number of Respondents:* 600.

*Frequency of Response:* 1.

*Average Burden Per Response:* 30 minutes.

*Estimated Annual Burden:* 300 hours.

III. The information collections listed below have been submitted to OMB for clearance. Your comments on the information collections would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance packages by calling the SSA Reports Clearance Officer at 410-965-0454, or by writing to the address listed above.

1. *Pain Report-Child—20 CFR 416.912 and 416.1512-0960-0540.* The

information collected by form SSA-3371-BK will be used to obtain the types of information specified in the regulations, and to provide disability interviewers (and applicants/claimants in self-help situations) with a convenient means of recording the information obtained. This information is used by the State disability determination services (DDS) adjudicators and administrative law judges to assess the effects of symptoms on functionality for determining disability under the Social Security Act. The respondents are applicants for Supplemental Security Income (SSI) benefits.

*Type of Request:* Extension of an OMB-approved information collection.

*Number of Respondents:* 250,000.

*Frequency of Response:* 1.

*Average Burden Per Response:* 15 minutes.

*Estimated Annual Burden:* 62,500 hours.

2. *Medical Permit Parking Application—0960–0624.* SSA issues medical parking assignments at SSA-owned and -leased facilities to individuals who have a medical condition which meets the criteria for medical parking. In order to issue a medical parking permit, SSA must obtain medical evidence from the applicant's physician. Form SSA-3192-F4 is used to collect this information. SSA then uses the information to determine whether the individual qualifies for a medical parking permit and whether or not to issue the permit. The respondents are physicians of applicants for medical parking permits.

*Type of Request:* Extension of an OMB-approved information collection.

*Number of Respondents:* 144.

*Frequency of Response:* 1.

*Average Burden Per Response:* 60 minutes.

*Estimated Annual Burden:* 144 hours.

#### IV. Notice of OMB Approval

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the Social Security Administration (SSA) is providing notice of OMB's approval of the information collections contained in 20 CFR 404.610, 404.611, and 422.505, Filing of Applications and Related Forms. In compliance with the Paperwork Reduction Act, persons are not required to respond to an information collection unless it displays a valid Office of Management and Budget control number. The OMB number is 0960–0685, which expires February 28, 2007.

Dated: March 1, 2004.

**Elizabeth A. Davidson,**

*Reports Clearance Officer, Social Security Administration.*

[FR Doc. 04–4889 Filed 3–4–04; 8:45 am]

**BILLING CODE 4191–02–P**

#### DEPARTMENT OF STATE

[Public Notice 4647]

#### Culturally Significant Objects Imported for Exhibition Determinations: “China: Dawn of a Golden Age (200–750 AD)”

**AGENCY:** Department of State.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of

October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 (68 FR 19875), I hereby determine that the objects to be included in the exhibition “China: Dawn of a Golden Age (200–750 AD),” imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owners. I also determine that the exhibition or display of the exhibit objects at The Metropolitan Museum of Art from on or about October 4, 2004 to on or about January 25, 2005, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of the exhibit objects, contact Wolodymyr R. Sulzynsky, the Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–5078). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: February 27, 2004.

**C. Miller Crouch,**

*Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.*

[FR Doc. 04–4994 Filed 3–4–04; 8:45 am]

**BILLING CODE 4710–08–P**

#### DEPARTMENT OF STATE

#### Delegation of Authority No. 120–6, Assistant Secretary for Administration

#### General Delegation

By virtue of the authority vested in me as Secretary of State by section 4 of the Act of May 26, 1949 (63 Stat. 111; 22 U.S.C. 2658), as amended, and by Title III of the Federal Property and Administrative Services Act of 1949 (63 Stat. 377, 393; 41 U.S.C. chapter 4), as amended, I hereby delegate to the Assistant Secretary of State for Administration the following authorities and functions:

#### Technical Provisions

1. The Assistant Secretary for Administration is authorized to exercise all duties, responsibilities and powers of the Secretary with respect to Department procurement.

2. The Assistant Secretary for Administration is hereby designated to act as Head of the Agency with respect to procurement. The Assistant Secretary for Administration shall:

a. Prescribe and publish the Department of State Acquisition Regulation (48 CFR chapter 6) and other directives pertaining to procurement including, but not limited to, those incorporated in 48 CFR chapter 6.

b. To the extent permitted by law, make all determinations and findings required by statute or regulation to be made by the Head of the Agency.

3. The authority delegated herein shall be exercised in accordance with the applicable limitations and requirements of the Federal Property and Administrative Services Act, as amended; the Federal Acquisition Regulation (48 CFR chapter 1); the applicable portions of the Federal Property Management Regulations (41 CFR chapter 101); as well as other relevant statutes and regulations.

4. The Assistant Secretary for Administration is authorized to redelegate to qualified employees of the Department any of the authority delegated under items 1 and 2.

5. The Assistant Secretary for Administration shall serve as Chief Acquisition Officer under section 16 of the Office of Federal Procurement Policy Act (41 U.S.C. 414), as amended by section 1421 of the Services Acquisition Reform Act (SARA), National Defense Authorization Act for Fiscal Year 2004, Title XIV, Pub. L. 108–136 (Nov. 24, 2003).

6. This delegation supplements Department of State Delegation No. DA1–120–4 (59 FR 38022) dated July 26, 1994.

Dated: February 21, 2004.

**Colin L. Powell,**

*Secretary of State, Department of State.*

[FR Doc. 04–4995 Filed 3–4–04; 8:45 am]

**BILLING CODE 4710–10–P**

#### DEPARTMENT OF STATE

[Public Notice 4646]

#### The Department of State on Behalf of the Millennium Challenge Corporation, Section 608(b), Public Law 108–199 (Division D); MCC FR 04–3: Report on the Criteria and Methodology for Determining the Eligibility of Candidate Countries for Millennium Challenge Account Assistance in FY 2004

**AGENCY:** State Department.

**SUMMARY:** The Millennium Challenge Act of 2003, Public Law 108–199 (Division D) (the “Act”) authorizes the provision of assistance to countries that enter into compacts with the United States to support policies and programs that advance the prospects of such countries achieving lasting economic

growth and poverty reduction. The Act requires the Millennium Challenge Corporation (MCC) to take a number of steps in determining the countries that, based on their demonstrated commitment to just and democratic governance, economic freedom and investing in their people, will be eligible countries for Millennium Challenge Account (MCA) assistance during Fiscal Year 2004. These steps include the publication of notices in the **Federal Register** that identify:

1. The “candidate countries” for MCA assistance (section 608(a) of the Act);
2. The eligibility criteria and methodology that will be used to choose “eligible countries” from among the “candidate countries” (section 608(b) of the Act); and
3. The countries determined by the Board of Directors of the Millennium Challenge Corporation to be “eligible countries” for FY 2004 and identify the countries on the list of eligible countries with which the Board will seek to enter into compacts (section 608 (d) of the Act).

This notice is the second of the three required notices listed above.

**DATES:** For a 30-day period beginning on March 5, 2004, the Millennium Challenge Corporation will accept public comment on the eligibility criteria and methodology contained in the report and will consider such comment for purposes of determining eligible countries.

**ADDRESSES:** Submit public comments electronically to [comments@mcc.gov](mailto:comments@mcc.gov) or

in writing addressed to: Public Comment, Millennium Challenge Corporation, 1000 Wilson Boulevard, Suite 1411, Arlington, VA 22209.

**SUPPLEMENTARY INFORMATION:** Report on the criteria and methodology for determining the eligibility of candidate countries for Millennium Challenge Account assistance in FY 2004.

#### Summary

This report is provided in accordance with section 608(b) of the Millennium Challenge Act of 2003, Pub. L. 108–199, Division D (the “Act”).

The Act authorizes the provision of assistance to countries that enter into compacts with the United States to support policies and programs that advance the prospects of such countries to achieve lasting economic growth and poverty reduction. The Act requires the Millennium Challenge Corporation (MCC) to take a number of steps to determine the countries that, based on their demonstrated commitment to just and democratic governance, economic freedom and investing in their people, will be eligible to receive Millennium Challenge Account (MCA) assistance during a fiscal year. These steps include the submission of reports to appropriate congressional committees and the publication of notices in the **Federal Register** that identify:

1. The “candidate countries” for MCA assistance (section 608(a) of the Act);
2. The eligibility criteria and methodology that the MCC Board of Directors (the “Board”) will use to select “eligible countries” from among the

“candidate countries” (section 608(b) of the Act); and

3. The countries determined by the Board to be “eligible countries” for a fiscal year and the countries on the list of eligible countries with which the Board will seek to enter into MCA “Compacts” (section 608(d) of the Act).

This report sets out the criteria and methodology to be applied in determining eligibility for FY 2004.

#### Methodology

The Board will select eligible countries based on their overall performance in relation to their peers in three broad policy categories: ruling justly, encouraging economic freedom, and investing in people. Section 607 of the Act requires that the Board’s determination of eligibility be based “to the maximum extent possible, upon objective and quantifiable indicators of a country’s demonstrated commitment” to the criteria set out in the Act. For FY 2004, candidate countries are those countries that are eligible for assistance from the International Development Association, have a per capita income equal to or less than \$1415, and are not ineligible to receive United States economic assistance.

The Board will make use of 16 indicators to assess policy performance of individual countries (specific definitions of the indicators and their sources are set out in Annex A). These indicators are grouped for purposes of the assessment methodology under the three policy categories as follows:

Ruling justly	Encouraging economic freedom	Investing in people
1. Civil Liberties .....	1. Country Credit Rating .....	1. Public Expenditures on Health as Percent of GDP.
2. Political Rights .....	2. 1-year Consumer Price Inflation .....	2. Immunization Rates: DPT3 and Measles.
3. Voice and Accountability .....	3. Fiscal Policy. ....	3. Public Primary Education Spending as Percent of GDP.
4. Government .....	4. Trade Policy .....	4. Primary Education Completion Rate.
5. Rule of Law .....	5. Regulatory Quality .....	
6. Control of Corruption .....	6. Days to Start a Business .....	

In making its determination of eligibility with respect to a particular candidate country, the Board will consider whether such country performs above the median in relation to its peers on at least half of the indicators in each of the three policy categories and above the median on the corruption indicator. One exception to these relative comparisons is inflation, for which a country needs to pass an absolute test of having an inflation rate under 20%.

The indicators methodology will be the predominant basis for determining which countries will be eligible for

MCA assistance. In addition, the Board may exercise discretion in evaluating and translating the indicators into a final list of eligible countries. In this respect, the Board may also consider whether any adjustments should be made for data gaps, lags, trends, or other weaknesses in particular indicators. Likewise, the Board may deem a country ineligible if it performs substantially below average on any indicator and has not taken appropriate measures to address this shortcoming.

Where necessary, the Board may also take into account other data and

quantitative information as well as qualitative information to determine whether a country performed satisfactorily in relation to its peers in a given category. As provided in the Act, the CEO’s report to Congress setting out the list of eligible countries and which of those countries the MCC will seek to enter into Compact negotiations will include a justification for such eligibility determinations and selections for Compact negotiation.

There are elements of the criteria set out in the Act for which there is either limited quantitative information (e.g.,

rights of people with disabilities) or no well-developed performance indicator (e.g., sustainable management of natural resources). Until such data and/or indicators are developed, in assessing performance in these areas the Board may rely on supplemental data and qualitative information such as:

- *Ruling Justly*: The State Department Human Rights report contains qualitative information to make an assessment on a variety of criteria outlined by Congress, such as the rights of people with disabilities, the treatment of women and children, worker rights, and human rights. As additional information, the Board may also consider how the country scores on Transparency International's Corruption Perceptions Index.

- *Economic Freedom*: The Board's assessment of a country's commitment to economic policies that promote private sector growth and the sustainable management of natural resources may make use of quantitative and qualitative information such as access to sanitation, deforestation, conservation of land and marine resources, land tenure institutions, and protection of threatened and endangered species. The MCC will consult with experts and work to refine this approach over time.

- *Investing in People*: Both the level and the trend in girls' primary enrollment rates may be considered as extra information to assess a country's commitment to Investing in People.

#### Relationship to Legislative Criteria

Within each policy category, the Act sets out a number of specific criteria. A set of objective and quantifiable indicators is being used to establish eligibility and measure the relative performance by candidate countries against these criteria. The Board's approach to determining eligibility ensures that performance against each of these criteria is assessed by at least one of the 16 objective indicators and most are addressed by multiple indicators.

Section 607(b)(1): Just and democratic governance, including a demonstrated commitment to—

(A) Promote political pluralism, equality, and the rule of law; Indicators—Political Rights, Civil Liberties, Voice and Accountability and Rule of Law.

(B) Respect human and civil rights, including the rights of people with disabilities; Indicators—Political Rights and Civil Liberties.

(C) Protect private property rights; Indicators—Civil Liberties, Regulatory Quality and Rule of Law.

(D) Encourage transparency and accountability of government; and Indicators—Political Rights, Civil Liberties, Voice and Accountability, and Government Effectiveness.

(E) Combat corruption; Indicators—Civil Liberties and Control of Corruption.

Where necessary the Board will also draw on supplemental data and qualitative information including: the State Department's Human Rights Report and Transparency International Corruption Perception's Index.

Section 607(b)(2): Economic freedom, including a demonstrated commitment to economic policies that—

(A) Encourage citizens and firms to participate in global trade and international capital markets; Indicators—Country Credit Rating, Fiscal Policy, Inflation, Trade Policy, and Regulatory Quality.

(B) Promote private sector growth and the sustainable management of natural resources; Indicators—Inflation, Days to Start a Business, Fiscal Policy, and Regulatory Quality.

(C) Strengthen market forces in the economy; and Indicators—Fiscal Policy, Inflation, and Regulatory Quality.

(D) Respect worker rights, including the right to form labor unions; and Indicators—Civil Liberties.

Where necessary the Board will also draw on supplemental data and qualitative information including: the State Department's Human Rights Report, access to sanitation, deforestation, conservation of land and marine resources, land tenure institutions, and protection of threatened and endangered species.

Section 607(b)(3): Investments in the people of such country, particularly women and children, including programs that—

(A) Promote broad-based primary education; and Indicators—Primary Education Completion Rate and Public Spending on Primary Education.

(B) Strengthen and build capacity to provide quality public health and reduce child mortality. Indicators—Immunization and Public Spending on Health.

Where necessary the Board will also draw on supplemental data and qualitative information including: the State Department's Human Rights Report and Girl's Primary Enrollment Rate.

#### Annex A: Indicator Definitions

The following 16 indicators will be used to measure candidate countries' adherence to the criteria found in section 607(b) of the Act. The indicators are intended to assess the degree to

which the political and economic conditions in a country serve to promote broad-based sustainable economic growth and thus provide a sound environment for the use of MCA funds. The indicators are not goals in themselves; rather they measure policies that are necessary conditions for a country to achieve broad-based sustainable economic growth. The indicators were selected based on their relationship to growth and poverty reduction, the number of countries they cover, their transparency and availability, and their relative soundness and objectivity. Where possible, the indicators rely on indices of performance developed by independent sources.

#### Ruling Justly

(1) *Civil Liberties*: A panel of independent experts rates countries on: freedom of expression, association and organizational rights, rule of law and human rights, and personal autonomy and economic rights. Source: Freedom House.

(2) *Political Rights*: A panel of independent experts rates countries on: The prevalence of free and fair elections of officials with real power; the ability of citizens to form political parties that may compete fairly in elections; freedom from domination by the military, foreign powers, totalitarian parties, religious hierarchies and economic oligarchies; and the political rights of minority groups. Source: Freedom House.

(3) *Voice and Accountability*: An index of surveys that rates countries on: ability of institutions to protect civil liberties, the extent to which citizens of a country are able to participate in the selection of governments, and the independence of the media. Source: World Bank Institute.

(4) *Government Effectiveness*: An index of surveys that rates countries on: the quality of public service provision, civil services' competency and independence from political pressures, and the government's ability to plan and implement sound policies. Source: World Bank Institute.

(5) *Rule of Law*: An index of surveys that rates countries on: The extent to which the public has confidence in and abides by rules of society; incidence of violent and non-violent crime; effectiveness and predictability of the judiciary; and the enforceability of contracts. Source: World Bank Institute.

(6) *Control of Corruption*: An index of surveys that rates countries on: the frequency of "additional payments to get things done," the effects of corruption on the business

environment, "grand corruption" in the political arena and the tendency of elites to engage in "state capture." Source: World Bank Institute.

#### Encouraging Economic Freedom

(1) *Country Credit Rating*: A semi-annual survey of bankers' and fund managers' perceptions of a country's risk of default. Source: Institutional Investor Magazine.

(2) *Inflation*: The most recent 12 month change in consumer prices as reported in the IMF's International Financial Statistics or in another public forum by the relevant national monetary authorities. Source: Multiple.

(3) *Fiscal Policy*: The overall budget deficit divided by GDP, averaged over a three-year period. The data for this measure is being provided directly by the recipient government and will be cross checked with other sources and made publicly available to try to ensure consistency across countries. Source: National Governments.

(4) *Days To Start a Business*: The Private Sector Advisory Service of the World Bank Group works with local lawyers and other professionals to examine specific regulations that impact business investment. One of their studies measures how many days it takes to open a new business. Source: World Bank.

(5) *Trade Policy*: A measure of a country's openness to international trade based on average tariff rates and non-tariff barriers to trade. Source: The Heritage Foundation's Index of Economic Freedom.

(6) *Regulatory Quality Rating*: An index of surveys that rates countries on: the burden of regulations on business, price controls, the government's role in the economy, foreign investment regulation and many other areas. Source: World Bank Institute.

#### Investing in People

(1) *Public Expenditure on Health*: Total expenditures by government at all levels on health divided by GDP. Source: National Governments.

(2) *Immunization*: The average of DPT3 and measles immunization rates for the most recent year available. Source: The World Health Organization WHO.

(3) *Total Public Expenditure on Primary Education*: Total expenditures by government at all levels on primary education divided by GDP. Source: National Governments.

(4) *Primary Completion Rate*: The number of students completing primary education divided by the population in the relevant age cohort. Source: World Bank and UNESCO.

Dated: March 2, 2004.

**Alan Larson,**

*Interim Chief Executive Officer, Millennium Challenge Corporation, Department of State.*  
[FR Doc. 04-4993 Filed 3-4-04; 8:45 am]

BILLING CODE 4710-07-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration (FAA)

#### Notice of Opportunity for Public Comment on Surplus Property Release at the Gadsden Municipal Airport, Gadsden, AL

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of intent to rule on land release request.

**SUMMARY:** Under the provisions of Title 49, U.S.C. 47153(c), notice is being given that the FAA is considering a request from the City of Gadsden to waive the requirement that a 15-acre parcel of surplus property, located at the Gadsden Municipal Airport, be used for aeronautical purposes.

**DATES:** Comments must be received on or before April 5, 2004.

**ADDRESSES:** Comments on this notice may be mailed or delivered in triplicate to the FAA at the following address: Jackson Airports District Office, 100 West Cross Street, Suite B, Jackson, MS 39208-2307.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to the City of Gadsden, Gadsden, Alabama at the following address: City of Gadsden, Post Office Box 267, Gadsden, AL 35902-0267.

**FOR FURTHER INFORMATION CONTACT:** Keafur Grimes, Program Manager, Jackson Airports District Office, 100 West Cross Street, Suite B, Jackson, MS 39208-2307, (601) 664-9886. The land release request may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA is reviewing a request by the City of Gadsden to release 15 acres of surplus property at the Gadsden Municipal Airport. The property will be purchased by NARMCO, which is a manufacturing facility. The net proceeds from the sale of this property will be used for airport purposes.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**. In addition, any person may, upon request, inspect the request, notice and other documents germane to the request in person at the City of Gadsden,

City Hall, 90 Broad Street, Room 302, Gadsden, Alabama.

Issued in Jackson, Mississippi, on February 24, 2004.

**Rans D. Black,**

*Manager, Jackson Airports District Office, Southern Region.*

[FR Doc. 04-5041 Filed 3-4-04; 8:45 am]

BILLING CODE 4910-13-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### Agency Information Collection Activities Under OMB Review

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of the currently approved collections. The ICR describes the nature of the information collection and the expected burden. The Federal Register Notice with a 60-day comment period soliciting comments on the following collections of information was published on August 11, 2003, pages 47628-47629.

**DATES:** Comments must be submitted on or before April 5, 2004. A comment to OMB is most effective if OMB receives it within 30 days of publication.

**FOR FURTHER INFORMATION CONTACT:** Judy Street on (202) 267-9895.

#### SUPPLEMENTARY INFORMATION:

### Federal Aviation Administration (FAA)

*Title:* Certification and Operations: Federal Aviation Regulations Part 125.

*Type of Request:* Revision of a currently approved collection.

*OMB Control Number:* 2120-0085.

*Form(s):* NA.

*Affected Public:* A total of 163 air carriers and commercial operators.

*Abstract:* Part A of subtitle VII of the revised title 49 United States Code authorizes the issuance of regulations governing the use of navigable airspace. 14 CFR part 125 will prescribe requirements for leased aircraft, Aviation Service Firms, and Air Travel Clubs. Information shows compliance and the applicant's eligibility.

*Estimated Annual Burden Hours:* An estimated 61,388 hours annually.

**ADDRESSES:** Send comments to the Office of Information and Regulatory Affairs, Office of Management and

Budget, 725 17th Street, NW., Washington, DC 20503, Attention FAA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on February 27, 2004.

**Judith D. Street,**

*FAA Information Collection Clearance Officer, Standards and Information Division, APF-100.*

[FR Doc. 04-5040 Filed 3-4-04; 8:45 am]

BILLING CODE 4910-13-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### Noise Exposure Map Notice: Receipt of Noise Compatibility Program and Request for Review

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the Gulfport-Biloxi Regional Airport Authority for the Gulfport-Biloxi International Airport under the provisions of 49 U.S.C. 47501 *et seq.* (Aviation Safety and Noise Abatement Act) and 14 CFR part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for the Gulfport-Biloxi International Airport under part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before August 24, 2004.

**DATES:** The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is February 26, 2004. The public comment period ends April 26, 2004.

**FOR FURTHER INFORMATION CONTACT:** William Schuller, Jackson Airports District Office, 100 West Cross Street, Suite B, Jackson, MS 39208-2307,

telephone (601) 664-9883. Comments on the proposed noise compatibility program should also be submitted to the above office.

**SUPPLEMENTARY INFORMATION:** This notice announces that the FAA finds that the noise exposure maps submitted for the Gulfport-Biloxi International Airport are in compliance with applicable requirements of part 150, effective February 26, 2004. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before August 24, 2004. This notice also announces the availability of this program for public review and comment.

Under 49 U.S.C., section 47503 (the Aviation Safety and Noise Abatement Act, hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes to take to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

Gulfport-Biloxi Regional Airport Authority submitted to the FAA originally on January 24, 2002, and in current form on September 25, 2003, noise exposure maps, descriptions and other documentation that were produced during the Airport Noise Compatibility Study Update of 2001 through 2003. It was requested that the FAA review this material as the noise exposure maps, as described in section 47503 of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 47504 of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the Gulfport-Biloxi Regional Airport Authority. The

specific documentation determined to constitute the noise exposure maps includes: current and forecast NEM graphics, plus all other narrative, graphic, or tabular representations of the data required by section A150.101 of part 150, and sections 47503 and 47506 of the Act, more specifically considered by FAA to be Chapters 1 through 8 of the Airport Noise Compatibility Study Update submitted to FAA on September 25, 2003. The FAA has determined that these maps for the Gulfport-Biloxi International Airport are in compliance with applicable requirements. This determination is effective on February 26, 2004. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or constitute a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 47503 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 47506 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator that submitted those maps, or with those public agencies and planning agencies with which consultation is required under certification by the airport operator, under section 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for the Gulfport-Biloxi International Airport, also effective on February 26, 2004. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to



approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before August 24, 2004.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing non-compatible land uses and preventing the introduction of additional non-compatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration,  
Jackson Airports District Office, 100  
West Cross Street, Suite B, Jackson, MS  
39208-2307;

Gulfport-Biloxi International Airport,  
Gulfport-Biloxi Regional Airport  
Authority Office, 14035-L Airport Road,  
Gulfport, MS 39503.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT**.

Issued in Jackson, Mississippi, on February 26, 2004.

**Rans D. Black,**

*Manager, Jackson Airports District Office,  
Southern Region.*

[FR Doc. 04-5039 Filed 3-4-04; 8:45 am]

**BILLING CODE 4910-13-M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### **Revised Noise Compatibility Program Notice, Austin-Bergstrom International Airport, Texas; Austin, TX**

**AGENCY:** Federal Aviation  
Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** The Federal Aviation Administration (FAA) announces its findings on the revision to the Noise Compatibility Program (NCP) submitted by the city of Austin, Texas, under the provisions of 49 U.S.C. (the Aviation Safety and Noise Abatement Act, hereinafter referred to as "the Act") and

14 CFR part 150. These findings are made in recognition of the description of Federal and non-Federal responsibilities in Senate Report No. 96-52 (1980). The revised NCP was submitted subsequent to a determination by the FAA that associated Noise Exposure Maps (NEM) submitted under 14 CFR part 150 for Austin-Bergstrom International Airport were in compliance with applicable requirements effective April 29, 2000. On February 11, 2004, the FAA approved the Austin-Bergstrom International Airport revised NCP. All of the revised recommendations of the program were approved.

**EFFECTIVE DATE:** The effective date of the FAA's approval of the Austin-Bergstrom International Airport revised NCP is February 11, 2004.

**FOR FURTHER INFORMATION CONTACT:** Mr. Paul E. Blackford, Department of Transportation, Federal Aviation Administration, 2601 Meacham Blvd., Fort Worth, TX 76137-4298, (817) 222-5607. Documents reflecting this FAA action may be reviewed at this same location.

**SUPPLEMENTARY INFORMATION:** This notice announces that the FAA has given its overall approval to the revised NCP for the city of Austin, Austin-Bergstrom International Airport effective February 11, 2004.

Under section 47504 of the Act, an airport operator who has previously submitted a NEM may submit to the FAA a NCP which sets forth the measures taken or proposed by the airport operator for the reduction of existing non-compatible land uses and prevention of additional non-compatible land uses within the area covered by the NEM. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport NCP developed in accordance with Federal Aviation Regulations (FAR) part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR part 150 program recommendations is measured according to the standards expressed in part 150 and the Act and is limited to the following determinations:

- a. The NCP was developed in accordance with the provisions and procedures of FAR part 150;
- b. Program measures are reasonably consistent with achieving the goals of

reducing existing non-compatible land uses around the airport and preventing the introduction of additional non-compatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to the FAA's approval of an airport NCP are delineated in FAR part 150, section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and a FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where Federal funding is sought, requests for project grants must be submitted to the FAA regional office in Fort Worth, Texas.

The FAA has determined the NEM, previously submitted for the Austin-Bergstrom International Airport, and approved by the FAA on May 8, 2000, continue to represent the present noise environment and an update to the NEM is not required.

On November 7, 2000, the FAA approved the Austin-Bergstrom International Airport NCP. The program was comprised of five measures designed for phased implementation by airport management and adjacent jurisdictions.

The city of Austin submitted a revised NCP to the FAA and requested the FAA evaluate and approve this material as a revision to the existing NCP as described in section 47504 of the Act. The FAA began its review of the program on August 15, 2003, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of

new or modified flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

Outright approval was granted for two proposed action elements in the revised NCP where the city of Austin requested Federal approval. Approved action items include land mitigation measures consisting of a land acquisition program and a sound insulation program.

These determinations are set forth in a Record of Approval signed by the Associate Administrator for Airports on February 11, 2004. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of the City of Austin, Department of Aviation, Austin-Bergstrom International Airport, 3600 Presidential Boulevard, Austin, Texas 78719.

Issued in Fort Worth, Texas, February 19, 2004.

**Joseph G. Washington,**

*Acting Manager, Airports Division.*

[FR Doc. 04-5042 Filed 3-4-04; 8:45 am]

BILLING CODE 4910-13-M

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA-2003-16564]

#### Qualification of Drivers; Exemption Applications; Vision

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of final disposition.

**SUMMARY:** The FMCSA announces its decision to exempt 29 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). The exemptions will enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce without meeting the vision standard prescribed in 49 CFR 391.41(b)(10).

**DATES:** March 5, 2004.

**FOR FURTHER INFORMATION CONTACT:** Ms. Sandra Zywockarte, Office of Bus and Truck Standards and Operations, (202) 366-2987, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590-0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

#### Electronic Access

You may see all the comments online through the Document Management System (DMS) at: <http://dmses.dot.gov>.

#### Background

On December 24, 2003, the FMCSA published a notice of receipt of exemption applications from 29 individuals, and requested comments from the public (68 FR 74699). The 29 individuals petitioned the FMCSA for exemptions from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. They are: Lee A. Burke, Barton C. Caldara, Terrance F. Case, Lawrence M. Daley, Allan Darley, Charley Davis, Ray L. Emert, Robin S. England, Jessie W. Ford, Richard Hailey, Jr., Spencer N. Haugen, Thomas R. Hedden, William G. Hix, Robert V. Hodges, Jay W. Jarvis, George R. Knavel, John R. Knott, III, Duane R. Krug, Eric M. Moats, Sr., Lester T. Papke, Edward D. Pickle, Charles D. Pointer, Richard A. Pruitt, Kent S. Reining, Bruce K. Robb, James J. Rouse, Ronald D. Ulmer, Mitchell A. Webb, and Jerry L. Wilder.

Under 49 U.S.C. 31315 and 31136(e), the FMCSA may grant an exemption for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The statute also allows the agency to renew exemptions at the end of the 2-year period. Accordingly, the FMCSA has evaluated the 29 applications on their merits and made a determination to grant exemptions to all of them. The comment period closed on January 23, 2004. No comments were received.

#### Vision and Driving Experience of the Applicants

The vision requirement in the FMCSRs provides:

A person is physically qualified to drive a commercial motor vehicle if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber (49 CFR 391.41(b)(10)).

Since 1992, the agency has undertaken studies to determine if this vision standard should be amended.

The final report from our medical panel recommends changing the field of vision standard from 70° to 120°, while leaving the visual acuity standard unchanged. (See Frank C. Berson, M.D., Mark C. Kuperwaser, M.D., Lloyd Paul Aiello, M.D., and James W. Rosenberg, M.D., "Visual Requirements and Commercial Drivers," October 16, 1998, filed in the docket, FHWA-98-4334.) The panel's conclusion supports the agency's view that the present visual acuity standard is reasonable and necessary as a general standard to ensure highway safety. The FMCSA also recognizes that some drivers do not meet the vision standard, but have adapted their driving to accommodate their vision limitation and demonstrated their ability to drive safely.

The 29 applicants fall into this category. They are unable to meet the vision standard in one eye for various reasons, including amblyopia, corneal scars, and loss of an eye due to trauma. In most cases, their eye conditions were not recently developed. All but six of the applicants were either born with their vision impairments or have had them since childhood. The six individuals who sustained their vision conditions as adults have had them for periods ranging from 16 to 49 years.

Although each applicant has one eye which does not meet the vision standard in 49 CFR 391.41(b)(10), each has at least 20/40 corrected vision in the other eye, and in a doctor's opinion has sufficient vision to perform all the tasks necessary to operate a CMV. The doctors' opinions are supported by the applicants' possession of valid commercial driver's licenses (CDLs) or non-CDLs to operate CMVs. Before issuing CDLs, States subject drivers to knowledge and performance tests designed to evaluate their qualifications to operate a CMV. All these applicants satisfied the testing standards for their State of residence. By meeting State licensing requirements, the applicants demonstrated their ability to operate a commercial vehicle, with their limited vision, to the satisfaction of the State.

While possessing a valid CDL or non-CDL, these 29 drivers have been authorized to drive a CMV in intrastate commerce, even though their vision disqualifies them from driving in interstate commerce. They have driven CMVs with their limited vision for careers ranging from 6 to 42 years. In the past 3 years, two of the drivers have had convictions for traffic violations. Two of these convictions were for speeding and one was for "failure to obey traffic sign." One driver was involved in two crashes but did not receive a citation in either.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the December 24, 2003, notice (68 FR 74699). Since there were no docket comments on the specific merits or qualifications of any applicant, we have not repeated the individual profiles here. Our summary analysis of the applicants is supported by the information published on December 24, 2003 (68 FR 74699).

#### **Basis for Exemption Determination**

Under 49 U.S.C. 31315 and 31136(e), the FMCSA may grant an exemption from the vision standard in 49 CFR 391.41(b)(10) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Without the exemption, applicants will continue to be restricted to intrastate driving. With the exemption, applicants can drive in interstate commerce. Thus, our analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce.

To evaluate the effect of these exemptions on safety, the FMCSA considered not only the medical reports about the applicants' vision, but also their driving records and experience with the vision deficiency. To qualify for an exemption from the vision standard, the FMCSA requires a person to present verifiable evidence that he or she has driven a commercial vehicle safely with the vision deficiency for 3 years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at docket number FMCSA-98-3637.

We believe we can properly apply the principle to monocular drivers, because data from a former FMCSA waiver study program clearly demonstrates that the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively. (See 61 FR 13338, 13345, March 26, 1996.) The fact that experienced monocular drivers with good driving records in the waiver program demonstrated their ability to drive safely supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those

required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly. (See Bates and Neyman, University of California Publications in Statistics, April 1952.) Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes. (See Weber, Donald C., Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process," Journal of American Statistical Association, June 1971.) A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3 consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

Applying principles from these studies to the past 3-year record of the 29 applicants receiving an exemption, we note that the applicants have had only two crashes and three traffic violations in the last 3 years. The applicants achieved this record of safety while driving with their vision impairment, demonstrating the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, the FMCSA concludes their ability to drive safely can be projected into the future.

We believe the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally

required because distances between them are more compact. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions. The veteran drivers in this proceeding have operated CMVs safely under those conditions for at least 3 years, most for much longer. Their experience and driving records lead us to believe that each applicant is capable of operating in interstate commerce as safely as he or she has been performing in intrastate commerce. Consequently, the FMCSA finds that exempting these applicants from the vision standard in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption. For this reason, the agency is granting the exemptions for the 2-year period allowed by 49 U.S.C. 31315 and 31136(e) to the 29 applicants listed in the notice of December 24, 2003 (68 FR 74699).

We recognize that the vision of an applicant may change and affect his/her ability to operate a commercial vehicle as safely as in the past. As a condition of the exemption, therefore, the FMCSA will impose requirements on the 29 individuals consistent with the grandfathering provisions applied to drivers who participated in the agency's vision waiver program.

Those requirements are found at 49 CFR 391.64(b) and include the following: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

#### **Discussion of Comments**

The FMCSA received no comments in this proceeding.

#### **Conclusion**

Based upon its evaluation of the 29 exemption applications, the FMCSA exempts Lee A. Burke, Barton C. Caldara, Terrance F. Case, Lawrence M.

Daley, Allan Darley, Charley Davis, Ray L. Emert, Robin S. England, Jessie W. Ford, Richard Hailey, Jr., Spencer N. Haugen, Thomas R. Hedden, William G. Hix, Robert V. Hodges, Jay W. Jarvis, George R. Knavel, John R. Knott, III, Duane R. Krug, Eric M. Moats, Sr., Lester T. Papke, Edward D. Pickle, Charles D. Pointer, Richard A. Pruitt, Kent S. Reining, Bruce K. Robb, James J. Rouse, Ronald D. Ulmer, Mitchell A. Webb, and Jerry L. Wilder from the vision requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above (49 CFR 391.64(b)).

In accordance with 49 U.S.C. 31315 and 31136(e), each exemption will be valid for 2 years unless revoked earlier by the FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31315 and 31136. If the exemption is still effective at the end of the 2-year period, the person may apply to the FMCSA for a renewal under procedures in effect at that time.

Issued on: March 1, 2004.

**Rose A. McMurray,**

*Associate Administrator for Policy and Program Development.*

[FR Doc. 04-4853 Filed 3-4-04; 8:45 am]

BILLING CODE 4910-EX-P

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

#### **Notice of Funds Availability for the Next Generation High-Speed Rail Program: Revenue Service Demonstration of Compliant Diesel Multiple Unit (DMU) Self-Propelled Passenger Cars**

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Notice.

**SUMMARY:** Under this Notice, the FRA encourages interested parties to submit by April 23, 2004, a Statement of Interest in receiving a grant to support a demonstration in daily revenue commuter or intercity passenger service, beginning in calendar year 2004, of Diesel Multiple Unit (DMU) self-propelled passenger rail cars which comply with all current Federal passenger car safety standards ("Compliant DMU"). The purpose of the demonstration is to determine the

current availability of Compliant DMU technology and the suitability of this equipment for regularly scheduled revenue service in the U.S. The subject Compliant DMU must meet all of the current requirements of 49 CFR part 238, as amended; compliance via "grandfathering" is not acceptable for the purposes of this announcement.

**DATES:** All submissions of Statements of Interest must be received in FRA's offices by close of business Thursday, April 23, 2004. The deadline for the submission of applications will be noted in the solicitation from FRA to prospective grantees as a result of the evaluation of the Statements of Interest.

**ADDRESSES:** Applicants must submit an original and six (6) copies to the Federal Railroad Administration at one of the following addresses:

Postal address (note correct ZIP Code): Federal Railroad Administration, Attention: Robert L. Carpenter, Office of Procurement Services (RAD-30), Mail Stop #50, 1120 Vermont Ave., NW., Washington, DC 20590.

FedEx/courier address (note correct ZIP Code): Federal Railroad Administration, Attention: Robert L. Carpenter, Office of Procurement Services (RAD-30), Room # 6126, 1120 Vermont Ave., NW., Washington, DC 20005.

Due to delays caused by enhanced screening of mail delivered via the U.S. Postal Service, applicants are encouraged to use other means to assure timely receipt of materials.

**FOR FURTHER INFORMATION CONTACT:** Steve Sill, Program Manager, Office of Railroad Development (RDV-11), Federal Railroad Administration, 1120 Vermont Avenue, NW., Washington, DC 20590. Phone: (202) 493-6348; Fax: (202) 493-6330, or Robert Carpenter, Grants Officer, Office of Acquisition and Grants Services (RAD-30), Federal Railroad Administration, 1120 Vermont Avenue, NW., Washington, DC 20590. Phone: (202) 493-6153; Fax: (202) 493-6171.

**SUPPLEMENTARY INFORMATION:** The demonstration will be supported with up to \$4,970,500 of Federal funds provided to FRA's Next Generation High-Speed Rail Program, as part of the Transportation, Treasury, and Independent Agencies Appropriations Act, 2004 (included as Division F of the Consolidated Appropriations Act, 2004 (Pub. L. 108-199 (January 23, 2004))). The Federal funds must be matched on a dollar-for-dollar basis from non-Federal sources. FRA anticipates soliciting one or two grant applications and awarding one or two grants for the demonstration to eligible participants,

with the intent of beginning demonstration during calendar year 2004. The funds made available under this grant will be available for activities related to establishing compliance of the DMU design with existing Federal passenger safety standards (49 CFR part 238, as amended), for the acquisition of DMUs through a conventional competitive procurement process, and for service facilities necessary for revenue service demonstration. The grantee will be responsible for all other expenses of the demonstration, including the cost of passenger facilities and any net operating expenses. FRA anticipates that no further public notice will be made with respect to selecting applicants for this demonstration.

**Purpose:** There is substantial interest in the expanded use of passenger rail service to help address congestion in other modes of transportation and/or to provide for additional alternatives to meet current and future mobility needs. Transportation planners and decision makers have expressed an interest in alternatives to locomotive hauled trains, which are currently the most prevalent form of passenger rail transportation in areas where electric operation is not available. Historically, DMUs were available for this purpose, but none has entered service domestically since FRA issued the Passenger Equipment Safety Standards Final Rule on May 12, 1999. Indeed, no DMUs had been built new in the U.S. for decades before the issuance of that rule. The purpose of the demonstration is to determine whether the current state of railroad technology development offers the availability, in the very near term, of a DMU self-propelled passenger car that meets current Federal passenger car safety standards found at 49 CFR part 238, as amended. If such technology is available, the demonstration will develop technology-specific cost, maintenance, reliability and operating data to help transportation planners and decision makers determine whether a Compliant DMU should be considered as an option for rail-based transportation. The equipment must meet all of the current requirements of 49 CFR part 238, as amended; compliance via "grandfathering" is not acceptable for the purposes of this announcement.

**Authority:** The authority for the Program can be found in title 49, United States Code, section 26102 and in the Transportation, Treasury, and Independent Agencies Appropriations Act, 2004 (included as Division F of the Consolidated Appropriations Act, 2004 (Pub. L. 108-199 (January 23, 2004))). The Secretary of Transportation's responsibilities under this

program have been delegated to the Federal Railroad Administration.

**Funding:** The Transportation, Treasury, and Independent Agencies Appropriations Act, 2004 provides \$4,970,000 and directs FRA to award one or more grants to demonstrate Compliant DMU vehicles. It is anticipated that the available funding will support one or two demonstrations. If two grants are awarded, FRA may choose not to award the grants in equal amounts. Additional funding for this or related work may be available in subsequent fiscal years.

**Schedule for Demonstration Program:** As directed by the Congress, FRA anticipates beginning demonstration in calendar 2004. It is anticipated that evaluation of the demonstration operation will continue for up to two years beyond the initial funding year. FRA anticipates that the eligible participant(s) will, where necessary, contract or otherwise enter into partnerships with developers and manufacturers of Compliant DMUs to accomplish the demonstration.

**Eligible Participants:** Any United States public transportation agency or combination of such agencies is eligible to apply for funding under this Notice. For state applicants, if the proposed demonstration territory is in more than one state, a single state agency should apply on behalf of all of the participating states.

**Eligible Technology Demonstrations:** Eligible projects must demonstrate a Compliant DMU vehicle in daily revenue passenger service beginning during calendar year 2004.

**Requirements for Statements of Interest:** The following points describe minimum content which will be required in Statements of Interest. Each Statement of Interest will:

1. Describe the proposed demonstration in detail, including the location and transportation service to be provided, the anticipated start date and duration of the demonstration, anticipated schedules, passenger service facilities to be employed, anticipated passenger utilization of the demonstration service, and how necessary maintenance and support operations will be conducted. Describe the scope of the demonstration proposed with Federal funding in the amount of \$4,970,500 and with Federal funding in the amount of \$2,485,250. Note that FRA may choose to award grants for any amount up to and including \$4,970,500.

2. Describe the types of DMU technology that the public agency is considering and how the Compliant

DMU used in the proposed demonstration will be selected.

3. Describe the rail line on which the proposed demonstration will be conducted, including any discussions the public agency has had with the owner of the rail line in connection with the proposed demonstration.

4. Describe the traffic types (including ownership of trains), volumes, and speeds presently involved in operation on the demonstration track segment(s), the planned Compliant DMU demonstration service volumes and speeds, and the estimated potential corridor service volumes and speeds.

5. Specify the quantities and ownerships of operating vehicles anticipated to be utilized to accomplish the demonstration.

6. Show how the demonstration system initially will operate in relation to existing service, both passenger and freight.

7. Show the estimated total cost and time for accomplishing each task for implementing the demonstration, including estimates broken out, at a minimum, into the following categories: demonstration planning and installation, Compliant DMU equipment acquisition, and operating and maintenance schedules and costs. Specify sources of proposed funding, clearly indicating sources for the required non-Federal dollar-for-dollar cash match.

8. Specify which organizations will supply and install key components of the demonstration system and, to the extent available, provide letters of commitment supporting the proposed activities, schedules, and non-Federal cost sharing. Letters of support from the railroad whose tracks and facilities are to be used for the demonstration should be included.

9. Discuss the systematic operational recording, monitoring, analysis, and reporting procedures to be followed during the demonstration.

10. Discuss plans for training and familiarization of operating and maintenance personnel for the demonstration system.

**Format:** Statements of Interest may not exceed twenty-five pages in length.

**Selection Criteria:** The following will be considered to be positive selection factors in evaluating Statements of Interest for this demonstration:

1. The timeliness of the initiation of the demonstration and the availability of the Compliant DMU technology to be demonstrated. Applicants must be able to begin revenue service during calendar year 2004.

2. The extent to which the demonstration will assist in

understanding the state-of-the-art in Compliant DMU technology in areas of desired advancement, including safety, reliability, efficiency, operational flexibility, maintainability, capital costs and/or operating costs of the corridor operation, as a whole, as well as of the Compliant DMU equipment itself.

3. The extent to which the demonstration will involve an innovative Compliant DMU technology available for commercial development, as opposed to modification of equipment previously in service but currently not produced.

4. The technological risk associated with successfully demonstrating Compliant DMU technology on the schedule proposed.

5. The compliance of the technology with other Federal requirements, including the Americans with Disabilities Act and relevant diesel emission standards of the U.S. Environmental Protection Agency.

6. The contribution the demonstration might have to the development or expansion of the domestic passenger rail car manufacturing industry.

7. The extent to which the demonstration will have ongoing transportation benefits after the end of the scheduled demonstration.

8. The ability of the Compliant DMU technology to be readily and economically expanded to respond to increased speed, volume, and complexity of traffic.

9. The extent of non-Federal contributions to the demonstration.

Issued in Washington, DC, on March 1, 2004.

**Mark E. Yachmetz,**

*Associate Administrator for Railroad Development.*

[FR Doc. 04-5023 Filed 3-4-04; 8:45 am]

BILLING CODE 4910-06-P

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[STB Finance Docket No. 34391]

**New England Transrail, LLC, d/b/a Wilmington and Woburn Terminal Railroad Co.—Construction, Acquisition, and Operation Exemption—In Wilmington and Woburn, MA**

**AGENCY:** Surface Transportation Board.

**ACTION:** Notice of exemption.

**SUMMARY:** Under 49 U.S.C. 10502, the Board conditionally exempts from the prior approval requirements of 49 U.S.C. 10901 the construction, acquisition, and operation by New England Transrail,

LLC, d/b/a Wilmington and Woburn Terminal Railroad Co. (W&WTR) of a combined total of 4,000 feet of trackage in Wilmington and Woburn, MA. W&WTR proposes to connect the line with two rail lines over which the Boston and Maine Corporation (B&M) provides rail common carrier service.

**DATES:** The exemption is subject to the Board's further consideration of the anticipated environmental impacts of the proposal and cannot become effective until the environmental review process is completed. Once that process is completed, the Board will issue a further decision addressing the environmental impacts and making the exemption effective at that time, if appropriate, subject to any necessary mitigation conditions. Petitions to reopen must be filed by March 25, 2004.

**ADDRESSES:** Send comments (an original and 10 copies) referring to STB Finance Docket No. 34391 to: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423-0001. In addition, send one copy of comments to applicant's representative: John F. McHugh, 6 Water Street, Suite 4001, New York, NY 10004.

**FOR FURTHER INFORMATION CONTACT:** Joseph H. Dettmar, (202) 565-1600. (Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.)

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: ASAP Document Solutions, 9332 Annapolis Road, Suite 103, Lanham, MD 20706. Telephone: (301) 577-2600. (FIRS for the hearing impaired: 1-800-877-8339.)

Board decisions and notices are available on the Board's Web site at <http://www.stb.dot.gov>.

Decided: March 2, 2004.

By the Board, Chairman Nober.

**Vernon A. Williams,**  
Secretary.

[FR Doc. 04-4992 Filed 3-4-04; 8:45 am]

BILLING CODE 4915-01-P

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[STB Finance Docket No. 34477]

#### The Burlington Northern and Santa Fe Railway Company—Temporary Trackage Rights Exemption—Union Pacific Railroad Company

Union Pacific Railroad Company (UP) has agreed to grant temporary overhead

trackage rights to The Burlington Northern and Santa Fe Railway Company (BNSF) over UP's (1) Lake Charles Subdivision line between UP milepost 680.2 at Iowa Junction, LA, and UP milepost 660.6 at Kinder, LA, (2) Beaumont Subdivision line between UP milepost 544.5 at Kinder, LA, and UP milepost 621.0 at Livonia, LA, and (3) Livonia Subdivision line between UP milepost 114.8 at Livonia, LA, and UP milepost 14.4 at Live Oak, LA, a total distance of approximately 196.5 miles.

The transaction is scheduled to be consummated on March 1, 2004, and the trackage rights are scheduled to expire on June 24, 2004. The purpose of the temporary trackage rights is to allow BNSF to bridge its train service while its main lines are out of service due to certain programmed track, roadbed, and structural maintenance.

As a condition to this exemption, any employees affected by the temporary trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified by *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980), *aff'd sub nom. Railway Labor Executives' Ass'n v. United States*, 675 F.2d 1248 (D.C. Cir. 1982).

This notice is filed under 49 CFR 1180.2(d)(8). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34477, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Sarah W. Bailiff, 2500 Lou Menk Drive, P. O. Box 961039, Fort Worth, TX 76161-0039.

Board decisions and notices are available on our Web site at <http://www.stb.dot.gov>.

Decided: February 27, 2004.

By the Board, David M. Konschnik,  
Director, Office of Proceedings.

**Vernon A. Williams,**  
Secretary.

[FR Doc. 04-4850 Filed 3-4-04; 8:45 am]

BILLING CODE 4915-01-P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Proposed Collection; Comment Request for Form 8453-EO

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8453-EO, Exempt Organization Declaration and Signature for Electronic Filing.

**DATES:** Written comments should be received on or before May 4, 2004 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622-3945, or through the Internet at [CAROLA.SAVAGE@irs.gov](mailto:CAROLA.SAVAGE@irs.gov).

#### SUPPLEMENTARY INFORMATION:

**Title:** Exempt Organization Declaration and Signature for Electronic Filing.

**OMB Number:** 1545-1879.

**Form Number:** 8453-EO.

**Abstract:** Form 8453-EO is used to enable the electronic filing of Forms 990, 990-EZ, or 1120-POL.

**Current Actions:** There are no changes being made to the form at this time.

**Type of Review:** Extension of a currently approved collection.

**Affected Public:** Not-for-profit institutions.

**Estimated Number of Respondents:** 200.

**Estimated Time Per Respondent:** 4 hours, 47 minutes.

**Estimated Total Annual Burden Hours:** 956.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to

respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Request for Comments:** Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 1, 2004.

**Glenn P. Kirkland,**

*IRS Reports Clearance Officer.*

[FR Doc. 04-5025 Filed 3-4-04; 8:45 am]

BILLING CODE 4830-01-P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Open Meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice.

**SUMMARY:** An open meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Wednesday, March 24, 2004, from 12 noon e.s.t. to 1 p.m. e.s.t.

**FOR FURTHER INFORMATION CONTACT:** Sallie Chavez at 1-888-912-1227, or 954-423-7979.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. app. (1988) that an open meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel will be held Wednesday, March 24, 2004, from 12 noon e.s.t. to 1 p.m. e.s.t. via a telephone conference call. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1-888-912-1227 or 954-423-7979, or write Sallie Chavez, TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Sallie Chavez. Ms. Chavez can be reached at 1-888-912-1227 or 954-423-7979, or post comments to the Web site: <http://www.improveirs.org>.

The agenda will include: Various IRS issues.

Dated: March 2, 2004.

**Bernard Coston,**

*Director, Taxpayer Advocacy Panel.*

[FR Doc. 04-5022 Filed 3-4-04; 8:45 am]

BILLING CODE 4830-01-P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Open Meeting of the Ad Hoc Committee of the Taxpayer Advocacy Panel

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice.

**SUMMARY:** An open meeting of the Ad Hoc Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel (TAP) will be discussing issues on IRS Customer Service.

**DATES:** The meeting will be held Monday, April 5, 2004.

**FOR FURTHER INFORMATION CONTACT:** Judi Nicholas at 1-888-912-1227, or 206-220-6096.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. app. (1988) that an open meeting of the Ad Hoc Committee of the Taxpayer Advocacy Panel will be held Monday, April 5, 2004 from 8 a.m. Pacific time to 9 a.m. Pacific time via a telephone conference call. If you would like to have the TAP

consider a written statement, please call 1-888-912-1227 or 206-220-6096, or write to Judi Nicholas, TAP Office, 915 2nd Avenue, MS W-406, Seattle, WA 98174.

The agenda will include the following: Various IRS issues.

Dated: March 2, 2004.

**Bernard Coston,**

*Director, Taxpayer Advocacy Panel.*

[FR Doc. 04-5024 Filed 3-4-04; 8:45 am]

BILLING CODE 4830-01-P

## UTAH RECLAMATION MITIGATION AND CONSERVATION COMMISSION

### Notice of Availability of the Decision Notice and Finding of No Significant Impact (FONSI) for Implementation of Fish and Wildlife Mitigation Features, Uinta Basin Replacement Project in Duchesne County, UT

**AGENCY:** Utah Reclamation Mitigation and Conservation Commission.

**ACTION:** Notice of availability.

**SUMMARY:** Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, as amended, the Utah Reclamation Mitigation and Conservation Commission (Mitigation Commission) proposes to implement measures to mitigate for adverse impacts on fish and wildlife resources associated with the Uinta Basin Replacement Project.

The Uinta Basin Replacement Project is a feature of the Bonneville Unit of the Central Utah Project, authorized by Section 203 of the Central Utah Project Completion Act (CUPCA; Titles II through VI of Pub. L. 102-575, as amended). The U.S. Department of the Interior—Central Utah Project (CUP) Completion Act Office, and the Central Utah Water Conservancy District documented environmental effects of constructing the Uinta Basin Replacement Project in a 2001 environmental assessment (EA). The Draft EA was developed with public input and the Final EA refined based upon public comment. The U.S. Department of the Interior—CUP Completion Act Office issued a Finding of No Significant Impact (FONSI) on October 19, 2001. The Lake Fork Alternative was selected for implementation and will be constructed near Upalco, Utah. The project will affect resources in the upper Lake Fork and Yellowstone river drainages. The Mitigation Commission has responsibility under Section 301(f)(3) of CUPCA to mitigate for adverse impacts on fish and wildlife resources.



Based on analysis contained in the Final EA, the Mitigation Commission commits to implement the following elements of fish and wildlife mitigation or enhancement as follows: (1) Modify outlet works at Moon Lake Dam and Reservoir to allow for winter-time operation. Such operation is necessary to provide increased instream flows in Lake Fork River downstream of the Moon Lake Dam, to fulfill a project purpose and commitment. (2) Stabilize, at elevations at or within five feet of natural elevation, 13 high mountain lakes in the Lake Fork and Yellowstone river headwaters (Brown Duck, Kidney, Island and Clements in the Lake Fork drainage; Bluebell, Drift, Five Point, Superior, Farmers, East Timothy, White Miller, Deer and Water Lily in the Yellowstone drainage). (3) Mitigate for all wetland/wildlife habitat impacts,

including those required by the U.S. Army Corps of Engineers Section 404 Permit, by restoring, creating or replacing wetlands and wildlife habitats impacted by construction and operation of the Lake Fork Alternative.

The above actions meet the Mitigation Commission's objective of implementing the Uinta Basin Replacement Project Mitigation program element of its five-year plan, and do so in the least environmentally damaging manner. Of the alternatives analyzed under the EA, the Lake Fork Alternative (which this decision implements as it pertains to fish and wildlife mitigation and enhancement) provides the least environmentally damaging alternative and the greatest degree of mitigation and enhancement. The decision is consistent with the U.S. Department of the

Interior—CUP Completion Act Office's October, 2001 FONSI.

**ADDRESSES:** Copies of the FONSI can be obtained from the Utah Reclamation Mitigation and Conservation Commission, 102 West 500 South, Suite 315, Salt Lake City, Utah, 84101.

The FONSI may also be viewed on our agency Web site via the following address: <http://www.mitigationcommission.gov/news.html>

**FOR FURTHER INFORMATION CONTACT:** Mr. Richard Mingo, Planning Coordinator, 801-524-3146.

Dated: February 24, 2004.

**Michael C. Weland,**  
*Executive Director, Utah Reclamation Mitigation and Conservation Commission.*  
[FR Doc. 04-5012 Filed 3-4-04; 8:45 am]  
**BILLING CODE 4310-05-P**



# Federal Register

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**Friday,  
March 5, 2004**

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## **Part II**

## **Environmental Protection Agency**

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**40 CFR Part 63**

**National Emission Standards for  
Hazardous Air Pollutants for Stationary  
Combustion Turbines; Final Rule**

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 63**

[OAR-2002-0060; FRL-7554-2]

RIN 2060-AG-67

**National Emission Standards for Hazardous Air Pollutants for Stationary Combustion Turbines****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

**SUMMARY:** This action promulgates national emission standards for hazardous air pollutants (NESHAP) for stationary combustion turbines. We have identified stationary combustion turbines as major sources of hazardous air pollutants (HAP) emissions such as formaldehyde, toluene, benzene, and acetaldehyde. The NESHAP will implement section 112(d) of the Clean Air Act (CAA) by requiring all major sources to meet HAP emission standards reflecting the application of the maximum achievable control technology (MACT) for combustion

turbines. In the final NESHAP, we have divided the stationary combustion turbine category into eight subcategories, including lean premix gas-fired turbines, lean premix oil-fired turbines, diffusion flame gas-fired turbines, diffusion flame oil-fired turbines, emergency turbines, turbines with a rated peak power output of less than 1.0 megawatt (MW), turbines burning landfill or digester gas, and turbines located on the North Slope of Alaska. We have also adopted a final emission standard requiring control of formaldehyde emissions for all new or reconstructed stationary combustion turbines in the four lean premix and diffusion flame subcategories. We estimate that 20 percent of the stationary combustion turbines affected by the final rule will be located at major sources. As a result, the environmental, energy, and economic impacts presented in this preamble reflect these estimates. The final rule will protect public health by reducing exposure to air pollution, by reducing total national HAP emissions by an estimated 98 tons per year (tpy) in the 5th year after the rule is promulgated.

**EFFECTIVE DATE:** March 5, 2004.

**ADDRESSES:** *Docket.* Docket ID No. OAR-2002-0060 (paper docket No. A-95-51) contains supporting information used in developing the standards. The docket is located at the U.S. EPA, 1301 Constitution Avenue, NW., Washington, DC 20460 in room B102, and may be inspected from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** For further information concerning applicability and rule determinations, contact the appropriate State or local agency representative. For information concerning the analyses performed in developing the NESHAP, contact Mr. Sims Roy, Combustion Group, Emission Standards Division (MD-C439-01), U.S. EPA, Research Triangle Park, North Carolina 27711; telephone number (919) 541-5263; facsimile number (919) 541-5450; electronic mail address "roy.sims@epa.gov."

**SUPPLEMENTARY INFORMATION:** *Regulated Entities.* Categories and entities potentially regulated by this action include:

Category	SIC	NAICS	Examples of regulated entities
Any industry using a stationary combustion turbine as defined in the regulation.	4911	2211	Electric power generation, transmission, or distribution
	4922	486210	Natural gas transmission
	1311	211111	Crude petroleum and natural gas production
	1321	211112	Natural gas liquids producers
	4931	221	Electric and other services combined

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in § 63.6085 of the final rule. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

**Docket.** The EPA has established an official public docket for this action under Docket ID No. OAR-2002-0060 (A-95-51). The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Air

and Radiation Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC 20460. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566-1744, and the telephone number for the Air and Radiation Docket is (202) 566-1742. A reasonable fee may be charged for copying docket materials.

**Electronic Access.** You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr/>.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/> to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically.

Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified above. Once in the system, select "search," then key in the appropriate docket identification number.

**Judicial Review.** Under section 307(b)(1) of the CAA, judicial review of the final NESHAP is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by May 4, 2004. Under section 307(d)(7)(B) of the CAA, only an objection to a rule or procedure raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements established by the final rule may not be challenged separately in any civil or criminal proceeding brought to enforce these requirements.

**Background Information Document.** The EPA proposed the NESHAP for stationary combustion turbines on January 14, 2003 (68 FR 1888), and

received 75 comment letters on the proposal. A background information document (BID) ("National Emission Standards for Stationary Combustion Turbines, Summary of Public Comments and Responses,") containing EPA's responses to each public comment is available in Docket ID No. OAR-2002-0060 (A-95-51).

*Outline.* The information presented in this preamble is organized as follows:

- I. Background
  - A. What is the Source of Authority for Development of NESHAP?
  - B. What Criteria are Used in the Development of NESHAP?
  - C. What are the Health Effects Associated with HAP from Stationary Combustion Turbines?
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  - H. Executive Order 13211: Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use
  - I. National Technology Transfer and Advancement Act
  - J. Congressional Review Act

## I. Background

### *A. What is the Source of Authority for Development of NESHAP?*

Section 112 of the CAA requires us to list categories and subcategories of major sources and area sources of HAP and to establish NESHAP for the listed source categories and subcategories. The stationary turbine source category was listed on July 16, 1992 (57 FR 31576). Major sources of HAP are those that have the potential to emit greater than 10 tpy of any one HAP or 25 tpy of any combination of HAP.

### *B. What Criteria are Used in the Development of NESHAP?*

Section 112 of the CAA requires that we establish NESHAP for the control of HAP from both new and existing major sources. The CAA requires the NESHAP to reflect the maximum degree of reduction in emissions of HAP that is achievable. This level of control is commonly referred to as the MACT.

The MACT floor is the minimum control level allowed for NESHAP and is defined under section 112(d)(3) of the CAA. In essence, the MACT floor ensures that the standard is set at a level that assures that all major sources achieve the level of control at least as stringent as that already achieved by the better controlled and lower emitting sources in each source category or subcategory. For new sources, the MACT standards cannot be less stringent than the emission control that is achieved in practice by the best controlled similar source. The MACT standards for existing sources can be less stringent than standards for new sources, but they cannot be less stringent than the average emission limitation achieved by the best

performing 12 percent of existing sources in the category or subcategory (or the best performing five sources for categories or subcategories with fewer than 30 sources).

In developing MACT, we also consider control options that are more stringent than the floor. We may establish standards more stringent than the floor based on the consideration of cost of achieving the emissions reductions, any non-air quality health and environmental impacts, and energy requirements.

### *C. What are the Health Effects Associated with HAP from Stationary Combustion Turbines?*

Emission data collected during development of the NESHAP show that several HAP are emitted from stationary combustion turbines. These HAP emissions are formed during combustion or result from HAP compounds contained in the fuel burned.

Among the HAP which have been measured in emission tests that were conducted at natural gas fired and distillate oil fired combustion turbines are: 1,3 butadiene, acetaldehyde, acrolein, benzene, ethylbenzene, formaldehyde, naphthalene, poly aromatic hydrocarbons (PAH) propylene oxide, toluene, and xylenes. Metallic HAP from distillate oil fired stationary combustion turbines that have been measured are: arsenic, beryllium, cadmium, chromium, lead, manganese, mercury, nickel, and selenium. Natural gas fired stationary combustion turbines do not emit metallic HAP.

Although numerous HAP may be emitted from combustion turbines, only a few account for essentially all the mass of HAP emissions from stationary combustion turbines. These HAP are: formaldehyde, toluene, benzene, and acetaldehyde.

The HAP emitted in the largest quantity is formaldehyde. Formaldehyde is a probable human carcinogen and can cause irritation of the eyes and respiratory tract, coughing, dry throat, tightening of the chest, headache, and heart palpitations. Acute inhalation has caused bronchitis, pulmonary edema, pneumonitis, pneumonia, and death due to respiratory failure. Long-term exposure can cause dermatitis and sensitization of the skin and respiratory tract.

Other HAP emitted in significant quantities from stationary combustion turbines include toluene, benzene, and acetaldehyde. The health effect of primary concern for toluene is dysfunction of the central nervous system (CNS). Toluene vapor also

causes narcosis. Controlled exposure of human subjects produced mild fatigue, weakness, confusion, lacrimation, and paresthesia; at higher exposure levels there were also euphoria, headache, dizziness, dilated pupils, and nausea. After-effects included nervousness, muscular fatigue, and insomnia persisting for several days. Acute exposure may cause irritation of the eyes, respiratory tract, and skin. It may also cause fatigue, weakness, confusion, headache, and drowsiness. Very high concentrations may cause unconsciousness and death.

Benzene is a known human carcinogen. The health effects of benzene include nerve inflammation, CNS depression, and cardiac sensitization. Chronic exposure to benzene can cause fatigue, nervousness, irritability, blurred vision, and labored breathing and has produced anorexia and irreversible injury to the blood-forming organs; effects include aplastic anemia and leukemia. Acute exposure can cause dizziness, euphoria, giddiness, headache, nausea, staggering gait, weakness, drowsiness, respiratory irritation, pulmonary edema, pneumonia, gastrointestinal irritation, convulsions, and paralysis. Benzene can also cause irritation to the skin, eyes, and mucous membranes.

Acetaldehyde is a probable human carcinogen. The health effects for acetaldehyde are irritation of the eyes, mucous membranes, skin, and upper respiratory tract, and it is a CNS depressant in humans. Chronic exposure can cause conjunctivitis, coughing, difficult breathing, and dermatitis. Chronic exposure may cause heart and kidney damage, embryotoxicity, and teratogenic effects.

We do not have the type of current detailed data on each of the facilities covered by the final rule and the people living around the facilities that would be necessary to conduct an analysis to determine the actual population exposures to the HAP emitted from these facilities and potential for resultant health effects. Therefore, we do not know the extent to which the adverse health effects described above occur in the populations surrounding these facilities. However, to the extent the adverse effects do occur, the final rule will reduce emissions and subsequent exposures.

#### *D. What is the Regulatory Development Background of the Source Category?*

In September 1996, we chartered the Industrial Combustion Coordinated Rulemaking (ICCR) advisory committee under the Federal Advisory Committee Act (FACA). The committee's objective

was to develop recommendations for regulations for several combustion source categories under sections 112 and 129 of the CAA. The ICCR advisory committee, also known as the Coordinating Committee, formed Source Work Groups for the various combustor types covered under the ICCR. One work group, the Combustion Turbine Work Group, was formed to research issues related to stationary combustion turbines. The Combustion Turbine Work Group submitted recommendations, information, and data analyses to the Coordinating Committee, which in turn considered them and submitted recommendations and information to us. The Committee's 2-year charter expired in September 1998. We considered the Committee's recommendations in developing the final rule for stationary combustion turbines.

We have received a petition from the Gas Turbine Association (GTA) requesting that we delist certain subcategories of combustion turbines. We have been working with GTA to improve and supplement the data supporting this petition. Once a final determination has been made concerning the delisting petition, we will promptly make any conforming amendments to the Stationary Combustion Turbine NESHAP which are warranted.

## **II. Summary of the Final Rule**

### *A. What Sources are Subject to the Final Rule?*

The final rule applies to you if you own or operate a stationary combustion turbine which is located at a major source of HAP emissions. A major source of HAP emissions is a plant site that emits or has the potential to emit any single HAP at a rate of 10 tpy (9.07 megagrams per year (Mg/yr)) or more or any combination of HAP at a rate of 25 tpy (22.68 Mg/yr) or more.

Section 112(n)(4) of the CAA requires that the aggregation of HAP for purposes of determining whether an oil and gas production facility is major or nonmajor be done only with respect to particular sites within the source and not on a total aggregated site basis. We referenced the requirements of section 112(n)(4) of the CAA in our NESHAP for Oil and Natural Gas Production Facilities in subpart HH of 40 CFR part 63. As in subpart HH, we plan to aggregate HAP emissions for the purposes of determining a major HAP source for turbines only with respect to particular sites within an oil and gas production facility. The sites are called surface sites and may include a

combination of any of the following equipment: glycol dehydrators, tanks which have potential for flash emissions, reciprocating internal combustion engines, and combustion turbines.

The EPA acknowledges that the definition of major source in the final rule may be different from those found in other rules, however, this does not alter the definition of major source in other rules and, therefore, does not affect the Oil and Natural Gas Production Facilities NESHAP (subpart HH of 40 CFR part 63) or any other rule applicability.

Eight subcategories have been defined within the stationary combustion turbine source category. While all stationary combustion turbines are subject to the final rule, each subcategory has distinct requirements. For example, existing combustion turbines and stationary combustion turbines with a rated peak power output of less than 1.0 MW (at International Organization for Standardization (ISO) standard day conditions) are not required to comply with emission limitations, recordkeeping or reporting requirements in the final rule. New or reconstructed combustion turbines must comply with emission limitations, recordkeeping and reporting requirements in the final rule. You must determine your source's subcategory to determine which requirements apply to your source.

The final rule does not apply to stationary combustion turbines located at an area source of HAP emissions. An area source of HAP emissions is a contiguous site under common control that is not a major source.

Stationary combustion turbines located at research or laboratory facilities are not subject to the final rule if research is conducted on the turbine itself and the turbine is not being used to power other applications at the research or laboratory facility.

The final rule does not cover duct burners. They are part of the waste heat recovery unit in a combined cycle system. Waste heat recovery units, whether part of a cogeneration system or a combined cycle system, are steam generating units and are not covered by the final rule.

Finally, the final rule does not apply to stationary combustion engine test cells/stands since these facilities are already covered by another NESHAP, 40 CFR part 63, subpart P. P. P. P. P.

*B. What Source Categories and Subcategories are Affected by the Final Rule?*

The final rule covers stationary combustion turbines. A stationary combustion turbine includes all equipment including, but not limited to, the turbine, the fuel, air, lubrication and exhaust gas systems, control systems (except emissions control equipment), and any ancillary components and sub-components comprising any simple cycle stationary combustion turbine, any regenerative/recuperative cycle stationary combustion turbine, or the combustion turbine portion of any stationary combined cycle steam/electric generating system. Stationary means that the combustion turbine is not self-propelled or intended to be propelled while performing its function. A stationary combustion turbine may, however, be mounted on a vehicle for portability or transportability.

Stationary combustion turbines have been divided into the following eight subcategories: (1) Emergency stationary combustion turbines, (2) stationary combustion turbines which burn landfill or digester gas equivalent to 10 percent or more of the gross heat input on an annual basis or where gasified MSW is used to generate 10 percent or more of the gross heat input to the stationary combustion turbine on an annual basis, (3) stationary combustion turbines of less than 1 MW rated peak power output, (4) stationary lean premix combustion turbines when firing gas and when firing oil at sites where all turbines fire oil no more than 1000 hours annually (also referred to herein as "lean premix gas-fired turbines"), (5) stationary lean premix combustion turbines when firing oil at sites where all turbines fire oil more than 1000 hours annually (also referred to herein as "lean premix oil-fired turbines"), (6) stationary diffusion flame combustion turbines when firing gas and when firing oil at sites where all turbines fire oil no more than 1000 hours annually (also referred to herein as "diffusion flame gas-fired turbines"), (7) stationary diffusion flame combustion turbines when firing oil at sites where all turbines fire oil more than 1000 hours annually (also referred to herein as "diffusion flame oil-fired turbines"), and (8) stationary combustion turbines operated on the North Slope of Alaska (defined as the area north of the Arctic Circle (latitude 66.5° North)).

Emergency stationary combustion turbine means any stationary combustion turbine that operates in an emergency situation. Examples include stationary combustion turbines used to

produce power for critical networks or equipment (including power supplied to portions of a facility) when electric power from the local utility is interrupted, or stationary combustion turbines used to pump water in the case of fire or flood, etc. Emergency stationary combustion turbines do not include stationary combustion turbines used as peaking units at electric utilities or stationary combustion turbines at industrial facilities that typically operate at low capacity factors. Emergency stationary combustion turbines may be operated for the purpose of maintenance checks and readiness testing, provided that the tests are required by the manufacturer, the vendor, or the insurance company associated with the turbine. Required testing of such units should be minimized, but there is no time limit on the use of emergency stationary sources.

Stationary combustion turbines which burn landfill or digester gas equivalent to 10 percent or more of the gross heat input on an annual basis or stationary combustion turbines where gasified MSW is used to generate 10 percent or more of the gross heat input to the stationary combustion turbine on an annual basis qualify as a separate subcategory because the types of control available for these turbines are limited.

Stationary combustion turbines of less than 1 MW rated peak power output were also identified as a subcategory. These small stationary combustion turbines are few in number and, to our knowledge, none use emission control technology to reduce HAP. Therefore, it would be inappropriate to require HAP emission controls to be applied to them without further information on control technology performance.

Two subcategories of stationary lean premix combustion turbines were established: stationary lean premix combustion turbines when firing gas and when firing oil at sites where all turbines fire oil no more than 1000 hours annually (also referred to as "lean premix gas-fired turbines"), and stationary lean premix combustion turbines when firing oil at sites where all turbines fire oil more than 1000 hours annually (also referred to as "lean premix oil-fired turbines"). Lean premix technology, introduced in the 1990's, was developed to reduce nitrogen oxide (NO<sub>x</sub>) emissions without the use of add-on controls. In a lean premix combustor, the air and fuel are thoroughly mixed to form a lean mixture for combustion. Mixing may occur before or in the combustion chamber. Lean premix combustors emit lower levels of NO<sub>x</sub>, carbon monoxide (CO), formaldehyde

and other HAP than diffusion flame combustion turbines.

Two subcategories of stationary diffusion flame combustion turbines were established: stationary diffusion flame combustion turbines when firing gas and when firing oil at sites where all turbines fire oil no more than 1000 hours annually (also referred to as "diffusion flame gas-fired turbines"), and stationary diffusion flame combustion turbines when firing oil at sites where all turbines fire oil more than 1000 hours annually (also referred to as "diffusion flame oil-fired turbines"). In a diffusion flame combustor, the fuel and air are injected at the combustor and are mixed only by diffusion prior to ignition. Hazardous air pollutant emissions from these turbines can be significantly decreased with the addition of air pollution control equipment.

Stationary combustion turbines located on the North Slope of Alaska have been identified as a subcategory due to operating limitations and uncertainties regarding the application of controls to these units. There are very few of these units, and none have installed emission controls for the reduction of HAP.

*C. What are the Primary Sources of HAP Emissions and What are the Emissions?*

Combustion turbines are acknowledged as the cleanest and most efficient method of producing electrical power. The sources of emissions are the exhaust gases from combustion of gaseous and liquid fuels in a stationary combustion turbine. Hazardous air pollutants that are present in the exhaust gases from stationary combustion turbines include formaldehyde, toluene, benzene, and acetaldehyde.

*D. What are the Emission Limitations and Operating Limitations?*

As the owner or operator of a new or reconstructed lean premix gas-fired turbine, a new or reconstructed lean premix oil-fired turbine, a new or reconstructed diffusion flame gas-fired turbine, or a new or reconstructed diffusion flame oil-fired turbine, you must comply with the emission limitation to reduce the concentration of formaldehyde in the exhaust from the new or reconstructed stationary combustion turbine to 91 parts per billion by volume (ppbv) or less, dry basis (ppbvd), at 15 percent oxygen by the effective date of the standards (or upon startup if you start up your stationary combustion turbine after the effective date of the standards).

If you comply with the emission limitation for formaldehyde emissions and you use an oxidation catalyst emission control device, you must continuously monitor the oxidation catalyst inlet temperature and maintain the inlet temperature to the oxidation catalyst within the range recommended by the catalyst manufacturer.

If you comply with the emission limitation for formaldehyde emissions and you do not use an oxidation catalyst emission control device, you must petition the Administrator for approval of operating limitations or approval of no operating limitations.

#### *E. What are the Initial Compliance Requirements?*

If you operate a new or reconstructed lean premix gas-fired turbine, a new or reconstructed lean premix oil-fired turbine, a new or reconstructed diffusion flame gas-fired turbine, or a new or reconstructed diffusion flame oil-fired turbine, you must conduct an initial performance test using Test Method 320 of 40 CFR part 63, appendix A, or ASTM D6348-03 to demonstrate that the outlet concentration of formaldehyde is 91 ppbvd or less (corrected to 15 percent oxygen). To correct to 15 percent oxygen, dry basis, you must measure oxygen using Method 3A or 3B of 40 CFR part 60, appendix A, and moisture using either Method 4 of 40 CFR part 60, appendix A, Test Method 320 of 40 CFR part 63, appendix A, or ASTM D6348-03. The initial performance test must be conducted at high load conditions, defined as 100 percent  $\pm 10$  percent.

If you operate a new or reconstructed stationary combustion turbine in one of the subcategories required to comply with an emission limitation and use an oxidation catalyst emission control device, you must also install a continuous parameter monitoring system (CPMS) to continuously monitor the oxidation catalyst inlet temperature.

If you operate a new or reconstructed stationary combustion turbine in one of the subcategories required to comply with an emission limitation and you do not use an oxidation catalyst emission control device, you must petition the Administrator for approval of operating limitations or approval of no operating limitations.

If you petition the Administrator for approval of operating limitations, your petition must include the following: (1) Identification of the specific parameters you propose to use as operating limitations; (2) a discussion of the relationship between these parameters and HAP emissions, identifying how HAP emissions change with changes in

these parameters, and how limitations on these parameters will serve to limit HAP emissions; (3) a discussion of how you will establish the upper and/or lower values for these parameters which will establish the limits on these parameters in the operating limitations; (4) a discussion identifying the methods you will use to measure and the instruments you will use to monitor these parameters, as well as the relative accuracy and precision of these methods and instruments; and (5) a discussion identifying the frequency and methods for recalibrating the instruments you will use for monitoring these parameters.

If you petition the Administrator for approval of no operating limitations, your petition must include the following: (1) Identification of the parameters associated with operation of the stationary combustion turbine and any emission control device which could change intentionally (e.g., operator adjustment, automatic controller adjustment, etc.) or unintentionally (e.g., wear and tear, error, etc.) on a routine basis or over time; (2) a discussion of the relationship, if any, between changes in these parameters and changes in HAP emissions; (3) for those parameters with a relationship to HAP emissions, a discussion of whether establishing limitations on these parameters would serve to limit HAP emissions; (4) for those parameters with a relationship to HAP emissions, a discussion of how you could establish upper and/or lower values for these parameters which would establish limits on these parameters in operating limitations; (5) for those parameters with a relationship to HAP emissions, a discussion identifying the methods you could use to measure these parameters and the instruments you could use to monitor them, as well as the relative accuracy and precision of these methods and instruments; (6) for these parameters, a discussion identifying the frequency and methods for recalibrating the instruments you could use to monitor them; and, (7) a discussion of why, from your point of view, it is infeasible, unreasonable, or unnecessary to adopt these parameters as operating limitations.

#### *F. What are the Continuous Compliance Provisions?*

Several general continuous compliance requirements apply to stationary combustion turbines required to comply with the emission limitations. You are required to comply with the emission limitations and the operating limitations (if applicable) at all times,

except during startup, shutdown, and malfunction of your stationary combustion turbine. You must also operate and maintain your stationary combustion turbine, air pollution control equipment, and monitoring equipment according to good air pollution control practices at all times, including startup, shutdown, and malfunction. You must conduct monitoring at all times that the stationary combustion turbine is operating, except during periods of malfunction of the monitoring equipment or necessary repairs and quality assurance or control activities, such as calibration checks.

To demonstrate continuous compliance with the emission limitations, you must conduct annual performance tests for formaldehyde. You must conduct the annual performance tests using Test Method 320 of 40 CFR part 63, appendix A, or ASTM D6348-03 to demonstrate that the outlet concentration of formaldehyde is at or below 91 ppbvd of formaldehyde (correct to 15 percent oxygen). The annual performance test must be conducted at high load conditions, defined as 100 percent  $\pm 10$  percent.

If you operate a new or reconstructed stationary combustion turbine in one of the subcategories required to comply with an emission limitation and you use an oxidation catalyst emission control device, you must demonstrate continuous compliance with the operating limitations by continuously monitoring the oxidation catalyst inlet temperature. The 4-hour rolling average of the valid data must be within the range recommended by the catalyst manufacturer.

If you operate a new or reconstructed stationary combustion turbine in one of the subcategories required to comply with an emission limitation and you do not use an oxidation catalyst emission control device, you must demonstrate continuous compliance with the operating limitations by continuously monitoring parameters which have been approved by the Administrator (if any).

#### *G. What are the Notification, Recordkeeping and Reporting Requirements?*

You must submit all of the applicable notifications as listed in the NESHAP General Provisions (40 CFR part 63, subpart A), including an initial notification, notification of performance test or evaluation, and a notification of compliance, for each stationary combustion turbine which must comply with the emission limitations. If your new or reconstructed stationary



combustion turbine is located at a major source, has greater than 1 MW rated peak power output, and is an emergency stationary combustion turbine, a combustion turbine which burns landfill or digester gas equivalent to 10 percent or more of the gross heat input on an annual basis or where gasified MSW is used to generate 10 percent or more of the gross heat input to the stationary combustion turbine on an annual basis, or a stationary combustion turbine located on the North Slope of Alaska, you must submit only an initial notification.

For each combustion turbine in one of the subcategories which is subject to an emission limitation, you must record all of the data necessary to determine if you are in compliance with the emission limitation. Your records must be in a form suitable and readily available for review. You must also keep each record for 5 years following the date of each occurrence, measurement, maintenance, report, or record. Records must remain on site for at least 2 years and then can be maintained off site for the remaining 3 years.

### III. Summary of Responses to Major Comments

A more detailed summary of comments and our responses can be found in the Summary of Public Comments and Responses document, which is available from several sources (see Addresses section).

#### A. Applicability

*Comment:* Several commenters said that the definition of affected source should be modified to be consistent with the definition found in § 63.2 of the General Provisions.

*Response:* Although 40 CFR 63.2 of the General Provisions provides that we will generally adopt a broad definition of affected source, which includes all emission units within each subcategory which are located within the same contiguous area, this section also provides that we may adopt a narrower definition of affected source in instances where we determine that the broader definition would “create significant administrative, practical, or implementation problems” and “the different definition would resolve those problems.” This is such an instance. Because of the way that the subcategories of combustion turbines are defined, individual turbines can switch between subcategories based on the fuel they are burning. We have taken some steps in the definition of subcategories to limit the frequency of such switching between subcategories, because we believe it could create

confusion and complicate compliance determinations. However, fuel specific subcategories are necessary to derive a MACT floor which appropriately considers the difference in the composition of the HAP emitted based on the fuel used. Thus, we cannot eliminate the possibility that individual turbines will switch subcategories. Use of the broader definition of affected source specified by the General Provisions would require very complex aggregate compliance determinations, because an individual turbine could be part of one affected source at one time and part of a different affected source at another time. This would require that the contribution of each turbine to total emissions for all emission units within each subcategory be adjusted to reflect the proportionate time the unit was operating within that subcategory. We believe such complicated compliance determinations to be impractical and, therefore, have decided to adopt a definition which establishes each individual combustion turbine as the affected source.

*Comment:* One commenter said that the final rule should be explicit as to whether the 1 MW capacity level for inclusion in the less than 1 MW rated peak power subcategory applies to an individual combustion turbine or applies to the aggregate capacity of a group of combustion turbines.

*Response:* We intended for the 1 MW capacity level to apply to an individual combustion turbine, not the aggregate capacity of a group of combustion turbines. This clarification has been made in the final rule.

*Comment:* Several commenters stated that EPA should increase the 1 MW capacity threshold. Comments received included suggestions to exclude from the rule turbines rated less than 10 MW and recommendations to create a subcategory for units with a capacity of 25 MW or less. Some commenters said that the size applicability criteria should be adjusted to be consistent with the MACT floor.

*Response:* Although 3 MW is the smallest size unit that is known to have add-on HAP control, we feel it is appropriate to set the cutoff for inclusion in the less than 1 MW rated peak power subcategory at 1 MW because the control technology used for 3 MW units can be transferred to units as small as 1 MW.

*Comment:* Many commenters recommended that EPA provide an emission threshold as an alternative applicability cutoff. Eight commenters recommended that the emission threshold should be set at less than 1 tpy of formaldehyde emissions. One

commenter suggested that EPA should include a greater than 2 tpy formaldehyde applicability requirement.

*Response:* The basis for this comment is the Oil and Natural Gas Production and Natural Gas Transmission and Storage NESHAP (promulgated on June 17, 1999). In that rule, HAP emissions from process vents at glycol dehydration units that are located at major HAP sources and from process vents at certain area source glycol dehydration units are required to be controlled unless the actual flowrate of natural gas in the unit is less than 85,000 cubic meters per day (3.0 million standard cubic feet per day), on an annual average basis, or the benzene emissions from the unit are less than 0.9 Mg/yr (1 tpy). The 1 tpy emission threshold in the Oil and Natural Gas Production and Natural Gas Transmission and Storage MACT is equivalent to the smallest size glycol dehydration unit with control of HAP emissions and is, therefore, based on equivalence, not risk.

*Comment:* Multiple commenters expressed that the emission factors presented in Table 1 of the preamble should be removed, or wording should be added to acknowledge the use of factors from other sources. Three commenters said that EPA should not dictate emission factors for major source determination; owners and operators should be allowed to determine appropriate emission factors for their facility.

*Response:* We agree with the commenter and have not included Table 1 from the proposal preamble in the final rule. Table 1 was intended to simplify major source determination, e.g., facilities would not have to develop their own emission factors. We agree that all turbines may not fit the emissions mold as projected in Table 1. The use of the emission factors in Table 1 was intended to be optional; we were not dictating the use of these emission factors.

The emission factors in Table 1 of the preamble to the proposed rule were based on emissions data from test reports that were reviewed and accepted by EPA according to a common set of acceptance criteria. However, we received several comments regarding the quality of the emissions data we used and as a result, performed an extensive review of tests used at proposal and new tests received during the comment period. As a result of that review, revised emission factors for stationary combustion turbines were calculated and are presented in a memorandum included in the rule docket (OAR-2002-0060, A-95-51). That memorandum has emission factors

for both high load and all load conditions. The emission standards in the final rule are based on data for high loads.

We believe that the emission factors presented in the memorandum provide the most accurate information on stationary combustion turbine emission factors. However, caution should be used when using data collected using California Air Resources Board (CARB) Method 430 or EPA Method 0011 in determining applicability. We have used CARB 430 and EPA Method 0011 in developing emission factors but applied a bias factor to the data to make the emissions data comparable with emissions data measured by Fourier Transform Infrared (FTIR).

*Comment:* Multiple commenters supported the creation of a subcategory for limited use combustion turbines with a capacity utilization of 10 percent or less. One commenter expressed the view that the limited use subcategory should apply to all limited use combustion turbines, not just electric power peak shaving units.

Three commenters supported the exemption for limited use units and EPA's finding that no emission reduction should be required for these units.

Several commenters requested that EPA increase the allowable operating time for limited use turbines. One commenter recommended that the 50-hour allowance for limited use be increased to 200 hours to allow for maintenance checks. Two commenters stated that a more appropriate cut-off is 500 hours per year, which one commenter said is consistent with EPA policy for designating emergency engines for title V permits and is also appropriate because year-to-year variability in the utilization does not result in routine changes in a unit's status. A commenter also suggested that EPA could develop a more refined approach; for example, the cutoff for turbines greater than 10 MW could be 200 hours per year.

One commenter said that if a 10 percent utilization is not implemented, the testing of combustion turbines to assure the unit will be operational when needed should be excluded from the operating limit, because these testing operations can range from weekly testing for more than 1 hour to several times each month.

Two commenters contended that the subcategorization of limited use combustion turbines without controls is not protective of public health, because these combustion turbines operate mostly in the summer months when the

public is more likely to be exposed to the emissions.

Two commenters remarked that any subcategorization of limited use combustion turbines should include a permit requirement that these units operate less than 876 hours per year. To lower costs for these units, less onerous monitoring requirements such as periodic stack tests with a temperature sensor on the catalyst could be required.

One commenter expressed the view that existing limited use combustion turbines might be exempted from the MACT emission limits, but new limited use combustion turbines should not be exempted. The commenter observed that in New Jersey, limited use units generally operate for less than 250 hours per year.

*Response:* The preamble for the proposed rule included a subcategory for limited use stationary combustion turbines and defined them as operating 50 hours or less per calendar year. We solicited comments on creating a subcategory of limited use stationary combustion turbines with capacity utilization of 10 percent or less and used for electric power peak shaving. After considering all of the comments, we decided not to include a subcategory for limited use stationary combustion turbines in the final rule. A subcategory of limited use stationary combustion turbines with capacity utilization of 10 percent or less and used for electric power peak shaving was not created because these sources are similar sources to units equipped with add-on oxidation catalyst control, and their operation only during peak periods does not preclude them from being equipped with add-on oxidation catalyst control. In response to the comment regarding subcategorization of limited use combustion turbines not being protective of public health, our objective in subcategorizing is not to protect public health, but to establish groups of sources which share common characteristics that are related to the availability of potential emission control strategies. In any case, we have not adopted a limited use subcategory, because we determined that creation of such subcategory would not change the nature of the required controls.

*Comment:* Two commenters recommended that to be consistent with most other NESHAP, EPA should add an exemption for research and development to the final rule.

*Response:* We agree that stationary combustion turbines located at a research or laboratory facility should not be subject to the NESHAP if research is conducted on the turbine itself and the turbine is not being used

to power other applications at the research or laboratory facility. A definition of research or laboratory facility is included in the final rule.

*Comment:* One commenter remarked that primary fuel is not defined in the rule. The commenter noted that applying the exemption only to turbines using landfill or digester gas as primary fuel is overly restrictive. The commenter suggested that the exemption should be for turbines with annual landfill and digester gas consumption of 10 percent or more of the total fuel consumption on an annual basis based on gross heat input. Other commenters requested that the exemption for firing landfill or digester gas be expanded to include combustion turbines used at gasification plants.

*Response:* We agree that it is appropriate to provide guidelines for the usage of landfill and digester gas. We have written the final rule to define turbines in the landfill and digester gas subcategory as those which burn landfill or digester gas equivalent to 10 percent or more of the gross heat input on an annual basis. In the final rule, the subcategory for combustion turbines firing landfill or digester gas has been expanded to include units where gasified MSW is used to generate 10 percent or more of the gross heat input to the turbine on an annual basis. We have specified in the final rule that new turbines in this subcategory must daily monitor their fuel usage with a separate fuel meter to measure the volume flow rate of each fuel. Finally, the final rule requires new combustion turbines in this subcategory to submit annual reports documenting the fuel flow rate of each fuel and the heating values used to calculate and demonstrate that the percentage of heat input provided by landfill, digester gas, or gasified MSW is equivalent to 10 percent or more of the total fuel consumption on an annual basis based on gross heat input.

*Comment:* Several commenters urged EPA to add a subcategory to cover turbines installed north of the Arctic Circle (North Slope) and to specify no additional control requirements for the subcategory. The commenters stated that technologies identified for controlling HAP emissions from stationary combustion turbines are unproven or have met with limited success in northern Alaska above the Arctic Circle. Lean premix combustion turbines have met with limited success on the Alaska's North Slope. The annual average temperature above the Arctic Circle is approximately 10°F, with winter temperatures that can drop below -50°F. Turbine manufacturers have been required to "de-tune" the

lean premix turbines to ensure the integrity of the equipment at these cold ambient temperatures.

One of the technical issues with lean premix operation at the North Slope is the very wide range of ambient temperatures over which the turbine must operate. A range of  $-50^{\circ}\text{F}$  to  $80^{\circ}\text{F}$  ( $130^{\circ}\text{F}$  range) is a very challenging requirement for turbine manufacturers. They have to employ various air bleed, inlet guide vane control, or fuel staging to allow them to operate at the cold extremes. Sites in Canada have reported having to tune their lean premix engines differently for the summer and winter months. Even when temperatures drop to extremely low levels in the lower 48 states, the duration of those low temperatures is normally measured in hours; on the North Slope it is not uncommon for equipment to have to endure months of severe cold. In addition to this large range, at the colder end of the range the airflow on some turbine models can be 40 percent higher than at the standard ISO design conditions of  $60^{\circ}\text{F}$ , creating an especially acute problem in lean premix units. Turbine manufacturers with experience in the Arctic do not guarantee  $\text{NO}_x$  and CO levels at cold ambient temperatures (below  $0^{\circ}\text{F}$ ). Therefore, lean premix turbines that can achieve low  $\text{NO}_x$  emissions typical of the lower 48 states' applications have not been demonstrated to be achievable north of the Arctic Circle. On the North Slope, less than  $0^{\circ}\text{F}$  represents about one-half of the year.

According to the commenters, vendors of CO oxidation catalysts have indicated that their products will perform adequately on the North Slope, but the technology has never been tried. To date, no CO oxidation catalyst has ever been installed on a turbine on the North Slope. It is unknown what impacts the extreme thermal conditions of North Slope operation will have on CO oxidation catalysts.

*Response:* We agree with the commenters that a subcategory should be created for turbines installed north of the Arctic Circle to recognize their distinct differences. There is a substantial difference in temperature between the North Slope of Alaska and even the coldest areas in the lower 48 states. As noted by the commenters, turbine operators on the North Slope of Alaska have experienced problems with operation of the turbines in lean premix mode, and turbine manufacturers do not guarantee the performance of their turbines at the ambient temperatures typically found north of the Arctic Circle. In addition, no turbines on the North Slope of Alaska are equipped

with oxidation catalyst control. Therefore, a subcategory for turbines north of the Arctic Circle has been established. The North Slope of Alaska is defined as above the Arctic Circle (latitude  $66.5^{\circ}$  North). Stationary combustion turbines operated on the North Slope of Alaska are not required to meet the emission limitations. However, new or reconstructed stationary combustion turbines operated on the North Slope of Alaska must submit an initial notification.

*Comment:* Two commenters expressed the view that the routine exchange of aeroderivative turbines for routine overhaul should not result in a facility becoming a new source. One commenter stated that EPA should provide an exemption for temporary replacement engines during routine rebuilds, and a mechanism to reduce the likelihood a source would suddenly trigger new source preconstruction review/approval and MACT requirements arising from an unexpected repair or replacement of a stationary combustion turbine.

*Response:* The definition of reconstructed turbine in the proposed rule is consistent with the General Provisions of 40 CFR part 63. If an existing combustion turbine is refurbished to the extent that it meets the definition of reconstruction, then it should be considered a reconstructed source. We are not aware of any routine refurbishment for which the fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable new source.

#### B. Definitions

*Comment:* One commenter requested that the definition of lean premix stationary combustion turbine be modified to recognize that fuel and air mixing may be occurring in the combustor of some lean premix combustion turbines. The definition should be modified to include these types of stationary combustion turbines that burn a lean mixture and thoroughly mix their fuel prior to combustion in the combustor.

*Response:* We have written the definition of lean premix in the final rule to recognize that fuel and air mixing may be occurring in the combustor of some lean premix combustion turbines.

*Comment:* Several commenters said that the definition of emergency stationary combustion turbine should include operational allowances for the periodic operation/testing to verify operational readiness. One commenter requested that the definition be

clarified, or extended to allow for operations in anticipation of an emergency situation. Four commenters asked for clarification as to whether loss of power that constitutes an emergency is limited to power supplied to the facility as a whole or includes power supplied to portions of a facility.

*Response:* We agree with the commenters who stated that readiness testing should be included in the definition of emergency operation. Accordingly, we have written the definition of emergency stationary combustion turbine to include allowances for readiness testing in the final rule. The routine testing and maintenance must be within limits recommended by the turbine manufacturer or other entity such as an insurance company. However, we disagree with the commenter who requested the definition to include operations in anticipation of an emergency situation. Exempt operations will be limited to emergency situations only. We agree that loss of power can include power supplied to portions of a facility, and we have, therefore, written the definition of stationary emergency combustion turbine in the final rule to make this clear.

*Comment:* Several commenters recommended that the definition of "stationary combustion turbine" include all appropriate associated equipment.

*Response:* We agree with the commenters' suggestions and have written the definition of stationary combustion turbines in the final rule to reflect appropriate comments. The definition of a stationary combustion turbine does not include emissions control equipment.

*Comment:* One commenter expressed support for the definition of major source except that the phrase "except when they are on the same surface site" should be removed from the combustion turbine major source definition. This phrase is not present in the 40 CFR part 63, subpart HH, major source definition that is the template for the combustion turbine MACT major source definition. Section 112(n)(4) of the CAA requires that wells and associated equipment not be aggregated even within the same surface site except as provided in the combustion turbine MACT major source definition. In the combustion turbine MACT major source definition, the phrase "storage vessel with flash emissions potential" should be changed to "storage vessel with the potential for flash emissions" to conform to the 40 CFR part 63, subpart HH, definition.

The commenter also stated that the General Provision major source

definition presented in the combustion turbine MACT is different from those found in the definition of major source in the NESHAP from Oil and Natural Gas Production Facilities (40 CFR 63.761). The significance of this difference is that sources that are area sources under subpart HH could possibly be rendered "major sources" under the combustion turbine MACT. The EPA should acknowledge this possibility in the preamble to the final rule and clearly state that this does not change the source's status under subpart HH or any other MACT. Another commenter recommended that the preamble clarify that the definition of major source in the combustion turbine MACT does not alter the definition of major source in subpart HH, and, therefore, does not affect subpart HH applicability.

*Response:* We agree with the commenters and have written the major source definition in the final rule to reflect appropriate comment. We have acknowledged in the preamble to the final rule that the definition of major source in the final rule may be different from those found in other rules.

However, this does not alter the definition of major source in other rules, and, therefore, does not affect the Oil and Natural Gas Production Facilities NESHAP (subpart HH of 40 CFR part 63) or any other rule applicability.

*Comment:* One commenter observed that landfill and digester gas are defined in the proposed rule as being formed through anaerobic decomposition, which is usually but not always the case.

*Response:* We agree with the commenter that landfill and digester gas are not always formed only through anaerobic decomposition. As a result, we have written the definition of landfill and digester gas in the final rule acknowledging that these gases are usually formed through anaerobic decomposition, but not always by inserting the word "typically" in front of "formed" in both definitions.

#### C. Dates

*Comment:* Two commenters stated that immediate compliance is unrealistic for new and reconstructed turbines and recommended a 1-year compliance timeframe. Other commenters recommended that the final rule allow 1 year to conduct the initial performance test, rather than the 180 days provided by the 40 CFR part 63, General Provisions.

*Response:* Immediate compliance is appropriate for new or reconstructed turbines and is consistent with the General Provisions of 40 CFR part 63.

Sources are required to install the proper equipment and meet the applicable emission limitations on startup. However, we allow sources 180 days to demonstrate compliance. We feel that 180 days is sufficient time to conduct the initial performance test, consistent with the General Provisions. Sources have the option to petition for additional time if necessary.

*Comment:* One commenter requested that EPA allow a facility with identical combustion turbines to conduct performance tests on only one of the units to demonstrate compliance with the emission limits for all of the identical units.

*Response:* We are not allowing facilities with identical combustion turbines to conduct performance tests on only one of the units to demonstrate compliance with the emission limits for all of the identical units because not all apparently identical facilities produce the same emissions. We have turned down many similar requests and have asked owners and operators to run stack tests on all individual units.

*Comment:* Two commenters requested that the rule provide 1 year for initial notification of MACT applicability, as in the Oil and Natural Gas Production and the Natural Gas Transmission and Storage MACT, instead of 120 days.

*Response:* We do not agree that 1 year is necessary for initial notification of MACT applicability. An initial notification is not a time consuming activity.

#### D. MACT

*Comment:* Three commenters took issue with the MACT floor for new diffusion flame stationary combustion turbines. The commenters stated that no formaldehyde emissions data or oxidation catalyst control efficiency data were available to EPA to support setting the MACT floor for new diffusion flame stationary combustion turbines; newer models of turbines in the diffusion flame category should be evaluated to identify the best-performing unit.

*Response:* At proposal, we had limited emissions data for stationary combustion turbines, including one test for a diffusion flame turbine with add-on HAP emission control, and we requested HAP emissions test data from stationary combustion turbines. We received new emissions data for diffusion flame turbines during the comment period, including an additional formaldehyde test on a diffusion flame unit equipped with add-on HAP emissions control. The new data also include several tests conducted using FTIR, which is

regarded as the most accurate measurement method for formaldehyde for stationary combustion turbines. Thus, the data set has been significantly improved, both quantitatively and qualitatively, and we feel that the data set is sufficient to identify the best-performing unit.

Based on comments and information received during the public comment period, the diffusion flame subcategory was divided further into subcategories for diffusion flame combustion turbines when firing gas and when firing oil at sites where all turbines fire oil for no more than 1000 hours annually ("diffusion flame gas-fired turbines") and for diffusion flame combustion turbines when firing oil at sites where all turbines fire oil more than 1000 hours annually ("diffusion flame oil-fired turbines").

In addition, based on information received during the public comment period indicating that oxidation catalysts are in use on some existing diffusion flame combustion turbines, we reevaluated the MACT floor for new turbines in each of the diffusion flame subcategories.

*Comment:* One commenter contended that the MACT floor for existing diffusion flame is unlawful because EPA did not identify the best performing sources or determine the emission levels they are achieving; EPA merely considered whether or not they are equipped with a catalyst. The commenter stated that whether or not the relevant best sources are equipped with control equipment, they are achieving some emission level, and EPA must determine the average emission level they are achieving and set floors at that level.

*Response:* We agree with the commenter that all factors which might control HAP emissions must be considered in making a floor determination for each subcategory, and that this analysis cannot be properly limited to add-on controls. However, we disagree that it must express the floor as a quantitative emission level in those instances where the source on which the floor determination is based has not adopted or implemented any measure that would reduce emissions. In this instance, we decided to subcategorize within diffusion flame combustion turbines based on the fuel which is used, because the composition of HAP emissions differs materially based on whether gas or oil is used. We then determined for each subcategory of diffusion flame combustion turbines that emissions of each HAP are relatively homogenous across that subcategory, and that there are not any

adjustments of the turbines or other operational modifications except for the use of add-on controls which would be effective in reducing HAP emissions. Since the source on which the floor for existing sources in each subcategory of diffusion flame turbines is based has not installed such add-on controls, we determined that the MACT floor for each such subcategory requires no emission reductions. We have also established fuel-based subcategories within lean premix combustion turbines, and have made a comparable determination that the MACT floor for existing sources within each of these subcategories requires no emission reductions.

*Comment:* One commenter said that the MACT floor for new diffusion flame units is unlawful because EPA did not identify the best-performing diffusion flame combustion turbine and the floor does not reflect what that source achieved in practice. According to the commenter, EPA ignored other factors that affect a source's performance (fuel, design, age, maintenance, operator training, skill and care, differences in effectiveness of catalysts). The performance of all sources using an oxidation catalyst is not the same and cannot possibly reflect the performance of the single best source.

*Response:* We agree with the commenter that the standard for new sources within each subcategory must be based on the emission levels achieved in practice by the best controlled similar source. However, we think that the performance in reducing emissions by the best controlled source will not be uniform, and that it would be inappropriate to establish a standard which could not be consistently met even by the source upon which the standard is based. We, therefore, believe that there must be some allowance made for the intrinsic variability in the effectiveness of controls in the standard we establish. We do not think that the performance of oxidation catalysts differs as much from one turbine to the next as suggested by the commenter, and we believe that the emission control levels achieved in practice by catalysts on differing turbines is one factor we may appropriately consider in evaluating the variability in emission control levels which is intrinsic to catalyst operation.

*Comment:* One commenter observed that EPA stated that it considered fuel switching but could not find a less HAP emitting fuel. The EPA's own data show that combustion turbines burning fuel oil have higher benzene and xylene emissions than combustion turbines firing natural gas or landfill gas. Had

EPA tested other HAP, it would likely have found that fuel oil produces higher levels of those HAP as well. The EPA has already found the entire diesel exhaust stream to be hazardous.

*Response:* We agree with the commenter that the composition of HAP emissions are different for combustion turbines firing natural gas and combustion turbines firing oil. We have evaluated both the data we had prior to proposal and the data received since proposal; the test data support the conclusion that HAP emissions are different for different fuels for stationary diffusion flame units. Uncontrolled formaldehyde emissions are in general lower as a result of the combustion of distillate oil than for natural gas. Other differences in emissions between natural gas and distillate oil include higher levels of pollutants such as PAH and metals for stationary combustion turbines burning distillate oil.

We proposed one subcategory for combustion turbines using lean premix technology and another subcategory for combustion turbines using diffusion flame technology. However, in recognition of the clear differences we found in the composition of HAP emissions depending on the fuel that is used, we have determined that it is appropriate to subcategorize further based on fuel use. In devising appropriate subcategories based on fuel use, we need to consider that many combustion turbines are configured both to use natural gas and distillate oil. These dual fuel units typically burn natural gas as their primary fuel, and only utilize distillate oil as a backup. To limit the frequency of switching between subcategories caused by limited usage of a backup fuel, we have defined the gas subcategories in a manner which permits combustion turbines that fire gas to remain in the gas subcategory if all turbines at the site in question fire oil no more than a total of 1000 hours during the calendar year.

*Comment:* Several commenters took issue with the methodology and data used to set the MACT floors for lean premix units. Two commenters contended that EPA's determination of the floor for existing lean premix turbines is fundamentally flawed, and that reliance on a single data point and the assumptions made to compensate for the inherent error and variability is not appropriate. It was suggested that EPA must obtain additional information before it can set a floor.

Two commenters stated that data from all five combustion turbines should be used to set the MACT floor for existing lean premix turbines. One commenter determined that the formaldehyde limit

should be 219 ppb if EPA declines to set the floor as no emission reduction.

Several commenters remarked that the MACT floor for new and existing lean premix turbines does not reflect a reasonable estimate of formaldehyde emissions achieved in practice by the best-performing source; EPA should adjust the MACT floor to reflect formaldehyde emissions reasonably expected over the operating range of the best-performing lean premix turbine. One commenter observed that EPA's use of the performance test of one "best" lean premix unit is not statistically viable and does not meet the statutory requirement for setting the MACT floor.

Two commenters said that EPA's emission standard for lean premix combustion turbines is unlawful and EPA should establish a "no control" emission limitation. It was also stated that EPA did not determine that the best performers in the subcategory were "controlling" their emissions in a duplicable manner. They stated that EPA improperly set the floor for the existing lean premix subcategory; EPA based the floor on the performance of the best source for which it had data, instead of basing it on the average emission limitation of the five sources for which it had data. They also stated that all of the variability that either the best performers will experience or that will affect the attainability of emissions had not been considered and suggested that EPA consider the normal turbine variations based on time, fuel, location, weather, and the repeatability of testing and monitoring methods.

*Response:* As previously discussed, we had limited emissions data at proposal for stationary combustion turbines. We had five tests for formaldehyde emissions for lean premix combustion turbines, none of which were on lean premix units with add-on HAP emission control. We received new emissions data for lean premix turbines, including two formaldehyde tests on a lean premix unit equipped with add-on HAP emissions control. The new data also include several tests conducted using FTIR, which is regarded as the most accurate measurement method for formaldehyde for stationary combustion turbines. Thus, the data set has been significantly improved, both quantitatively and qualitatively, and EPA believes that the data set is sufficient to identify the best-performing unit.

Also, as discussed previously, we decided that it is appropriate to subcategorize based on fuel within the subcategories for diffusion flame and lean premix combustion turbines. We have established subcategories for lean

premix combustion turbines when firing gas and when firing oil at sites where all turbines fire oil for no more than 1000 hours annually ("lean premix gas-fired turbines"), and for lean premix combustion turbines when firing oil at sites where all turbines fire oil more than 1000 hours annually ("lean premix oil-fired turbines").

As a result of comments and the new data submitted post-proposal, we also have reevaluated the MACT floor for both existing and new turbines in each of the lean premix subcategories.

*Comment:* One commenter said that the MACT floor for existing lean premix combustion turbines is unlawful. The floor (formaldehyde) is at a level far worse than the emission levels achieved by the best source. The 95 percent reduction standard is unlawful because it does not even purport to reflect the actual emission levels achieved by the relevant best sources. The commenter also stated that CO is not a valid surrogate.

*Response:* We reevaluated the MACT floor for existing gas-fired and oil-fired LPC units as a result of comments and the new data submitted post-proposal. We do not agree that CO reduction is not a valid surrogate for HAP reduction, however, the alternative CO emission limitation has been removed from the final rule due to CO measurement difficulties. Thus, the commenter's concerns are moot. We have determined that formaldehyde is an appropriate and valid surrogate for each of the organic HAP that can be controlled by a catalyst, and that the standard for such organic HAP can be reasonably expressed in terms of formaldehyde emissions measured after exiting any control device.

*Comment:* One commenter stated that the MACT floor for new lean premix units does not reflect the actual performance of the single best source.

*Response:* As explained above, we believe that we must accommodate intrinsic variability in performance when setting a standard which is based on the performance of the best controlled similar source. It would make no sense to adopt a standard based on the best controlled source which could not be consistently met even by that source.

*Comment:* One commenter remarked that for MACT, EPA's rejection of potential control technologies that might be applied, including wet scrubbers, dry scrubbers, and activated carbon, without even considering them is unlawful, and that EPA's argument that a greater degree of reduction could not be achieved through the use of clean fuels is unlawful.

*Response:* We agree with the commenter that the effect of the choice of natural gas or fuel oil on the composition of HAP emissions is significant, and we have, therefore, subcategorized further within both lean premix and diffusion flame turbines based on which of these fuels is used. We are not aware of any data indicating that HAP emissions could be consistently reduced by selection of particular clean fuels within these general fuel groups. As for the other novel emission control technologies to which the commenter refers, we do not believe that these technologies are in use on any combustion turbine and we do not consider any sources utilizing such controls to be similar sources. Moreover, we are unable based on available information to determine that these technologies would be both efficacious and cost effective in reducing HAP emissions from combustion turbines.

*Comment:* One commenter remarked that for existing emergency, limited use, landfill or digester gas fired, and less than 1 MW units, EPA did not set a floor that reflects the emission levels that the best performing sources actually achieved. The EPA has not identified the relevant best performing sources and has not determined the average emission limitation achieved by such sources, therefore, EPA's floors for these sources are unlawful.

*Response:* We have not decided to establish a limited use subcategory. For the emergency, landfill or digester gas fired, and less than 1 MW subcategories, we have not identified any adjustments or other operational modifications that would materially reduce emissions by these units and we have determined that no add-on controls are presently in use. In these circumstances, we believe that we have appropriately established the floors for these sources as no emission reduction.

*Comment:* One commenter said that for new emergency, limited use, landfill or digester gas fired, and less than 1 MW units, the floor is unlawful because EPA did not identify the single best controlled source in any of these subcategories and did not set floors reflecting such source's actual performance.

*Response:* As noted above, we have not decided to establish a limited use subcategory. For the emergency, landfill or digester gas fired, and less than 1 MW subcategories, we have not identified any adjustments or operational modifications that would materially reduce emissions by these units and we have determined that no add-on controls are presently in use. We also

have determined because of the specific characteristics of turbines in these subcategories that the turbines in other subcategories that utilize add-on controls are not similar sources. In these circumstances, we believe that we have appropriately determined that the new source MACT floor for these subcategories should also be no emission reduction.

*Comment:* One commenter contended that EPA's rejection of beyond the floor standards for new emergency, limited use, landfill or digester gas fired, and less than 1 MW units is arbitrary and capricious. The EPA does not state the cost of applying any control technology or indicate the quantity of the HAP that would be reduced.

*Response:* We believe that the record includes analysis demonstrating that it is not cost effective to require HAP controls for turbines in instances where no similar source has installed such controls.

*Comment:* One commenter said that EPA's proposal is unlawful because EPA must set standards for each listed HAP. Oxidation catalyst control devices do not control many of the HAP that combustion turbines emit, for example metals.

*Response:* We do not agree that it is required to establish a discrete standard for each listed HAP. However, we do agree that each listed HAP must be separately considered by EPA, both in determining the MACT floors and in establishing the emission standards for each subcategory. If emissions of a particular HAP are relatively homogenous for a particular subcategory, and there are no adjustments or operational modifications except for add-on controls which would reduce emissions of that HAP, the MACT floor and the emission standard for that HAP may be expressed as a level of emission reduction corresponding to the efficacy of add-on controls. Moreover, if the data demonstrate that control of emissions of a particular HAP is a suitable surrogate for control of emissions of a group of listed HAP, we may appropriately set the standard in terms of a level of emission reduction or an emission level for that particular HAP.

In establishing new source standards for certain subcategories, we determined that formaldehyde is an appropriate surrogate for the other organic HAP which are also controlled by an oxidation catalyst. While use of an oxidation catalyst does not control the metallic HAP which are emitted by turbines burning distillate oil, there are no combustion turbines or similar sources utilizing other technologies to

control metallic HAP. Moreover, we do not believe it would be practical or cost effective to require control of these metallic HAP and, therefore, the floor and the standard for each metallic HAP was appropriately set at no emission reduction.

*Comment:* One commenter noted that EPA's floors must reflect the average emission levels achieved by the relevant best sources. Thus, even if some of the relevant best sources are not using any control device, the agency must average their performance with that of the relevant best sources that are using a control device. That some of the relevant best performers are not using an end-of-stack control technology does not allow EPA to discount the performance of other best performers that are using such technology.

*Response:* We do not agree with the premise of this commenter that the existing source MACT floor (the average emission limitation achieved by the best performing 12 percent of existing sources or the best performing five existing sources in subcategories with fewer than 30 sources) must be calculated by determining the arithmetic average of the emission limitations achieved individually by each of these sources. We have consistently construed the statute to permit us to determine the average emission limitation by selecting the median facility among the best performing 12 percent or five existing sources. We think this well-established construction of the statute is reasonable, because an arithmetic average will quite often not coincide with the level of emission reduction that has been achieved in practice by any real facility. We do not think it is appropriate to establish an existing source MACT floor which may not be achievable by most of the sources from which it was derived. Nor do we think it is required to set a standard which is less stringent than most of the sources from which it is derived are achieving. Use of the emission limitation achieved by the median facility avoids these problems.

#### E. Emission Limitations

*Comment:* Many commenters stated that the final rule should only apply emission standards to the load range represented by the emissions data used to determine emission limitations.

*Response:* The emission standards are based on data from testing at high loads (90 percent and greater). To address the concerns expressed by the commenters about the emission standards being applicable at full load only, the final rule specifies that the performance test must be conducted at high load

conditions, defined as 100 percent  $\pm 10$  percent.

*Comment:* Many commenters took issue with the data used to set the formaldehyde emission limitation. The commenters noted that the test reports used to set the limit used two different test methods and that the limit was based on only five data points and, therefore, does not reflect a level of performance that is achievable for all sources. One commenter said that EPA has not provided enough data to know definitively what the standard should be. Another commenter stated that EPA must obtain additional information before it can set a floor.

The commenters also had concerns about possible errors in the test reports that are the source of the emissions data used to set the formaldehyde emission limitation. One commenter said that close examination of the five reports uncovers questions regarding the actual test procedures, comparability, data reduction and data reporting that should be revisited before finalizing the formaldehyde concentration limit. They stated that all five reports appear to have calculation errors and/or other data quality issues that significantly affect the reported formaldehyde concentration, the comparability of the results because different test methods were used, and/or uncertainty associated with the average result. One commenter also reviewed the five tests used to set the standard and found that all of the five tests used do not present valid quantitative results; and that data from these tests may not be used to establish a quantitative emission standard for formaldehyde emissions from lean premix combustion turbines.

One commenter said that CARB 430 may report anomalously low formaldehyde emissions; therefore, the standard may be too stringent and unachievable in practice. Two commenters questioned whether the CARB 430 data used to develop the standard followed CARB method requirements. One commenter believed that the results from all tests used to determine the MACT floor should be recalculated using CARB 430 procedures so the data can be justifiably compared and that results should also be recalculated using the American Society of Mechanical Engineers measurement uncertainty analysis procedure. The EPA should then use these results for establishing the formaldehyde concentration limit. The commenter estimated that an enforceable formaldehyde concentration limit should be in the range of approximately 100 to 500 ppb.

One commenter said that a single emission test does not fully reflect the variability that will be seen by the best performing source employing any technology. The EPA should properly assess variability that may be experienced by the best performing sources under the worst foreseeable conditions that are expected to recur. Emission testing conducted by the commenter in conjunction with the Gas Turbine Institute indicates that 43 ppb is not achievable for small industrial and aeroderivative turbines.

Several commenters suggested a revised level for the emission limitation. One commenter said that EPA must revise the limit upward to at least 63 ppb. Two commenters stated that additional formaldehyde data suggests that EPA should consider setting the emission standard to 90 ppbvd given the tremendous variability in the few measurements that are available. One commenter submitted a summary table of data for nine tests conducted on lean premix combustion turbines. The test results show a variability between high and low loads of 34 percent; also, six out of nine tests were above 43 ppb.

*Response:* As a result of comments received during the comment period, we performed an extensive review of tests used at proposal and new tests received during the comment period. A screening analysis of the formaldehyde test data for diffusion flame combustor turbines was conducted. Tests conducted using CARB 430 were evaluated due to the CARB advisory issued April 28, 2000, which stated that formaldehyde data measured by CARB 430 where the NO<sub>x</sub> emissions were greater than 50 ppm should be flagged as non-quantitative. Tests where the NO<sub>x</sub> emissions were greater than 50 ppm, or tests where the NO<sub>x</sub> levels were unknown, were excluded from our analysis. Most of the diffusion flame tests in the EPA's combustion turbine emissions database were unable to pass the screening. The tests unable to pass the screening were not equipped with add-on control for the reduction of HAP.

The remaining test reports were further analyzed and reviewed to ensure the methods were used correctly in calculating and reporting formaldehyde concentrations and to check that proper quality assurance (QA)/quality control (QC) procedures were followed. A number of errors were found in the test reports where CARB 430 was used to quantify formaldehyde concentrations. In several instances, the CARB 430 reporting protocol was not followed. If the analytical concentration is less than five times the average field blank, then CARB 430 uses five times the field



blank as the reported result to correct for interferences or contaminants that can react with the formaldehyde or dinitrophenylhydrazine to yield negative bias. However, many test reports did not report formaldehyde concentrations in this fashion. The formaldehyde concentrations were, therefore, recalculated where the CARB 430 reporting protocol was not followed correctly.

No errors were found in test reports which used FTIR to measure formaldehyde concentrations in the stationary combustion turbine exhaust. The reported formaldehyde concentrations were representative of stationary combustion turbines and the measured QA/QC parameters were within acceptable limits as set in the method.

We agree that CARB 430 generally understates the formaldehyde concentration in the exhaust gas from stationary combustion turbines. Since EPA Method 0011 is a similar method to CARB 430, it is believed that Method 0011 also understates the emissions of formaldehyde. We feel that FTIR is a more accurate and reliable method than CARB 430. Several test reports were received during the comment period on recent testing on small lean premix combustion turbines which used both CARB 430 and FTIR to measure formaldehyde emissions. An analysis was conducted to correlate formaldehyde concentrations measured by CARB 430 and formaldehyde concentrations measured by FTIR. A linear regression was performed on the CARB 430 and FTIR formaldehyde data from these tests which gave a slope of 1.667 with a correlation coefficient of 0.561. Therefore, we concluded that CARB 430 formaldehyde results are on average 1.7 times lower than FTIR formaldehyde results. To account for the differences in the methods, a bias factor of 1.7 was applied to the CARB 430 and Method 0011 formaldehyde emissions data to make these data comparable to FTIR.

As a result of a complete data review, including emissions data we had at proposal and new emissions data we received during the comment period, we currently have a very different data set as compared to what we had at proposal. For example, the amount of data for lean premix units increased, while the amount of data for diffusion flame units decreased. As discussed previously, the new data set was used to determine the MACT floors. For new lean premix gas-fired turbines and new lean premix oil-fired turbines, a formaldehyde emission limitation of 91 ppb was established for the MACT floor.

It is felt that this emission limitation will be achievable for both small and large size combustion turbines. We considered establishing separate subcategories by size but found that there was little difference in emissions among the best performing small and large units. The best performing large lean premix unit was controlled by an oxidation catalyst, and EPA had data from two separate tests of this turbine. Formaldehyde emissions were measured at 19 and 91 ppb. The best performing small lean premix unit (less than 25 MW) had uncontrolled formaldehyde emissions of 68 ppb, which is within the range of emissions for the large lean premix unit.

We have adequately considered the variability in emissions by the best performing source. We have emissions data for two tests for the best performing turbine in the lean premix gas-fired turbine subcategory; the formaldehyde emissions varied by a factor of five between the two tests. Since both tests were performed under similar conditions but at different times, they represent the variability of the best performing unit. The MACT floor for this subcategory was set based on the higher formaldehyde measurement, thus the variability of the best performing unit has been accounted for. Similar variability factors were applied for the other subcategories. This is explained further in section III.E.

#### *F. Monitoring, Recordkeeping, and Reporting*

*Comment:* Multiple commenters requested that the CO continuous emission monitoring system (CEMS) requirement be removed and periodic testing/parametric monitoring be adopted. Some commenters cited the cost burden of a CEMS, and others noted that a requirement for CO CEMS imposes an excessive cost burden for smaller turbines. One commenter also noted that CEMS have typically not been required on small turbines and personnel would not be familiar with CEMS operation and maintenance, resulting in increased capital and operating costs. Furthermore, one commenter felt that there would not be significant emissions reduction for the use of CEMS compared to the use of inlet temperature monitoring and periodic emission testing, the requirement is inconsistent with previous EPA decisions on monitoring, and there are deficiencies in the test methods and performance protocols. One commenter questioned whether the low measurements can be made accurately and reliably on a continuous

basis without jeopardizing the flexibility of facility operations.

Many commenters recommended alternatives to the CO CEMS requirement. One commenter suggested the option of monitoring compliance with a one-time performance test for CO. One commenter said that an option could be reliance on a Federal CO permit limit combined with periodic CO stack testing. If the permitted CO limit is relatively high, compliance with the formaldehyde limit at that level could first be determined using an initial formaldehyde test. If the CO limits/concentration are low, initial formaldehyde testing should not be necessary. The commenter recommended that EPA establish a default minimum compliance demonstration at 5 parts per million (ppm). One commenter recommended that EPA evaluate periodic stack tests, conducted on the same schedule as relative accuracy test audit (RATA) testing as an alternative to CEMS. At a minimum, this approach should be pursued for units with oxidation catalyst systems that would qualify as peaking units under the Acid Rain Program and are not otherwise required to conduct emissions monitoring for CO or other pollutants.

One commenter said that a more workable solution would be to measure downstream CO, but only if a CEMS is already required for NO<sub>x</sub>. A catalyst efficiency test could be performed periodically to confirm continued reduction efficiency (an option to perform this check with portable analyzer should be included). One commenter said that if EPA includes an option to monitor CO emissions using CPMS rather than CO CEMS, a requirement to replace a catalyst bed when the pressure drop increases by more than 2 inches of water from the drop measured during the initial performance test may not be appropriate. Particular vendors are better able to specify the conditions under which catalyst replacement is warranted.

*Response:* In the preamble for the proposed rule, we solicited comments on the performance capabilities of a state-of-the-art CO CEMS and its ability to measure the low concentrations of CO in the exhaust of a stationary combustion turbine following an oxidation catalyst control device. In general, commenters did not support CO CEMS, stating that existing CO CEMS technology and EPA performance criteria are not adequate to reliably and accurately measure trace levels of CO. Due to the CO measurement difficulties, EPA has decided not to include the CO

emission reduction limitation in the final rule.

*Comment:* One commenter remarked that subsequent performance testing (suggest no more frequent than annually) is needed for units meeting the formaldehyde limit, and that there should also be some methodology for the demonstration of continuous compliance.

*Response:* We agree with the commenter that subsequent performance testing is needed for units meeting the formaldehyde limit. The final rule includes a requirement for annual performance testing for units meeting the formaldehyde limit and designated requirements for continuous compliance. For sources equipped with oxidation catalyst control, continuous compliance will be demonstrated by continuously monitoring the inlet temperature to the catalyst and maintaining the inlet temperature within the range suggested by the catalyst manufacturer. Sources that are not equipped with oxidation catalyst control must petition the Administrator for approval of operating limitations or approval of no operating limitations.

*Comment:* One commenter said that EPA should allow facilities to use existing test data to demonstrate compliance with the emission limitation if the test was conducted using the same methods specified in the rule and no process changes have been made since the test, or it can be demonstrated that the results of the performance test reliably demonstrate compliance despite process changes.

*Response:* Since there are no emission limitation requirements for existing sources in the final rule, we expect that few facilities will have existing test data to demonstrate compliance. Facilities that came online after the proposal would be the only sources that may have conducted emissions testing prior to the stack testing requirements of the final rule, and we will allow facilities to use existing test data to demonstrate initial compliance with the emission limitation if the data is of good quality and is no older than 2 years. (After the initial compliance demonstration, facilities must then begin to follow the annual compliance test schedule.) The facility must petition the Administrator for approval and demonstrate that the tests were conducted using the same test methods specified in the subpart, the test method procedures were correctly followed, no process or equipment changes have been made since the test, and the data are of good quality and less than 2 years old. This has been specified in the final rule.

#### G. Test Methods

*Comment:* Several commenters expressed concern regarding the accuracy and precision of CARB Method 430 at levels commensurate with the proposed standard. Two commenters noted that CARB Method 430 is susceptible to interferences. One commenter said that sample loss and measurement uncertainties can contribute to large measurement variability. Another commenter contended that CARB Method 430 is an indirect measurement method and is inferior to Method 320. This commenter also said that CARB Method 430 cannot give realistic results.

*Response:* New information provided during the public comment period where CARB 430 and FTIR were concurrently tested showed that CARB 430 using the CARB reporting protocol is biased low by a factor of 1.7 compared to FTIR. Therefore, we agree with the commenters' concerns regarding the accuracy of CARB Method 430 and that it is an indirect measurement method, however, EPA disagrees that CARB Method 430 cannot give realistic results. In some cases, we believe that CARB Method 430 can provide realistic results. However, we also agree that FTIR would be the better compliance method. Therefore, we have specified Method 320 and ASTM D6348-03 as the compliance procedures in the final rule.

*Comment:* Several issues were raised in the comments received regarding EPA Method 0011. One commenter did not support the use of EPA Method 0011 for combustion turbines because there is no need for isokinetic sampling in combustion turbine stacks, compared to CARB Method 430 the field procedure is more complex, the potential for chronic field contamination is much greater, the QA/QC procedures are vastly inferior, the data reporting procedures especially with respect to blanks are more vague, and the method does not have sufficient sensitivity for demonstrating compliance with the proposed formaldehyde limit.

*Response:* We agree with the commenters that the method has many shortcomings and limited application opportunities for use in measuring formaldehyde emissions from stationary combustion turbines. Accordingly, we are not including EPA Method 0011 in the final rule. Both EPA Method 0011 and CARB Method 430 can be requested on a case-by-case basis as part of EPA's alternative method review process.

*Comment:* Several commenters did not support Method 323. The commenters said that the method

should not be used for measuring very low concentrations of formaldehyde. The minimum detection levels of the method are not suitable for the emission standards. Two commenters also noted that the method has not been validated or demonstrated for use on combustion turbines with low ppb range formaldehyde emissions.

*Response:* We agree with commenters that Method 323 should not be used for measuring low concentrations of formaldehyde from combustion turbines. Therefore, we are not including Method 323 in the final rule.

*Comment:* Numerous commenters said that CO CEMS cannot reliably measure trace level CO concentrations and 95 percent CO reduction. One commenter remarked that EPA provides no information to show that CEMS are available to accurately measure low CO concentrations, and the use of CO CEMS for low levels is well beyond the scope of current 40 CFR part 60 CEMS performance standards. Also, vendor claims for CO CEMS and CO instrumental analyzers, unless accompanied by emissions test data obtained under known and controlled conditions applicable to the subject source type, should not be considered adequate proof of availability and performance.

*Response:* We agree that existing CO CEMS technology and EPA performance criteria are not adequate to reliably and accurately measure trace levels of CO. The American Society for Testing and Materials (ASTM) is currently trying to address this issue, with participation by EPA. The requirement for CO CEMS has not been included in the final rule.

*Comment:* Three commenters sought an allowance for site specific emission limits where duct burners are utilized and the formaldehyde limit applies. Three commenters recommended that facilities should be allowed to either accept the formaldehyde limit at the stack with the duct burner in operation, or be allowed to petition the EPA for an alternate (higher) formaldehyde limit for the combined turbine/duct burner co-firing.

*Response:* We have included the commenters' suggestions that facilities be allowed to accept the formaldehyde limit at the stack with the duct burner in operation in the final rule; however, it is not necessary to specify in the final rule that affected sources are allowed to petition EPA for an alternate formaldehyde limit.

#### H. Risk-Based Approaches

The preamble to the proposed rule requested comment on whether there might be further ways to structure the

final rule to focus on the facilities which pose significant risks and avoid the imposition of high costs on facilities that pose little risk to public health and the environment. Specifically, we requested comment on the technical and legal viability of three risk-based approaches: an applicability cutoff for threshold pollutants under the authority of CAA section 112(d)(4), subcategorization and delisting under the authority of CAA section 112(c)(1) and (9), and, a concentration-based applicability threshold.<sup>1</sup>

We indicated that we would evaluate all comments before determining whether either approach would be included in the final rule. Numerous commenters submitted detailed comments on these risk-based approaches. These comments are summarized in the Response-to-Comments document (*see* SUPPLEMENTARY INFORMATION section).

Based on our consideration of the comments received and other factors, we have decided not to include the risk-based approaches in today's final rule. The risk-based approaches described in the proposed rule and addressed in the comments we received raise a number of complex issues. In addition, we must issue the final rule expeditiously because the statutory deadline for promulgation has passed, and we have agreed to a binding schedule in a consent decree entered in *Sierra Club v. Whitman*, Civil Action No. 1:01CV01537 (D.D.C.). Given the range of issues raised by the risk-based approaches and the need to promulgate a final rule expeditiously, we believe that it is appropriate not to include any risk-based approaches in today's final rule.

#### I. Other

*Comment:* Two commenters remarked that EPA's declaration that diesel fired turbines cannot be operated in the lean premix mode is a misstatement. While some manufacturers, on some models, only offer liquid fuel capability in diffusion flame mode, other manufacturers have offered the dual fuel option on lean premix turbines since the mid-1990's. One commenter stated that the standard should be modified because of the dual fuel capability of combustion turbines. The commenter noted that EPA has no data to represent lean premix liquid fuel operation and, therefore, cannot determine an appropriate standard.

*Response:* At the time the NESHAP were proposed, we were not aware of the availability of diesel fired turbines that operated in the lean premix mode. We have since contacted several turbine manufacturers in an attempt to obtain more information about these units, and two manufacturers confirmed that they do offer diesel firing while operating in lean premix mode. The commenter is correct that we have no emissions test data for lean premix units firing liquid fuel, however, information provided by the manufacturers indicated that their emission guarantees for CO and hydrocarbons were similar for both natural gas and diesel. Also, testing on dual fuel diffusion flame units shows that formaldehyde emissions are actually lower for distillate oil firing. Therefore, we have established an emission standard for lean premix oil-fired units in the final rule.

*Comment:* One commenter observed that HAP emissions from sources burning natural gas are enormously different from sources burning other fuels such as diesel. The commenter questioned EPA's argument that the summation of emission factors for various HAP for different fuels is comparable. The commenter also said that EPA does not explain what the summation of emission factors means or how it might be relevant to EPA's floors for any HAP.

*Response:* We agree with the commenter that the composition of HAP emissions from sources burning natural gas is different than from sources burning diesel fuel. Uncontrolled formaldehyde emissions are in general lower as a result of the combustion of distillate oil than for natural gas. Other differences in emissions between natural gas and distillate oil include higher levels of pollutants such as PAH and metals for stationary combustion turbines burning distillate oil. We agree that the summation of emission factors for various HAP for different fuels may be different. As discussed in the response to previous comments, due to the differences in HAP emissions, subcategories based on fuel were established for both diffusion flame and lean premix turbines.

#### IV. Rationale for Selecting the Final Standards

##### A. How Did We Select the Source Category and Any Subcategories?

Stationary combustion turbines can be major sources of HAP emissions and, as a result, we listed them as a major source category for regulatory development under section 112 of the CAA, which allows us to establish

subcategories within a source category for the purpose of regulation. Consequently, we evaluated several criteria associated with stationary combustion turbines which might serve as potential subcategories.

We identified emergency stationary combustion turbines as a subcategory. Emergency stationary combustion turbines operate only in emergencies, such as a loss of power provided by another source. These types of stationary combustion turbines operate infrequently and, when called upon to operate, must respond without failure and without lengthy periods of startup. These conditions limit the applicability of HAP emission control technology to emergency stationary combustion turbines.

Similarly, stationary combustion turbines which burn landfill or digester gas equivalent to 10 percent or more of the gross heat input on an annual basis or where gasified MSW is used to generate 10 percent or more of the gross heat input to the stationary combustion turbine on an annual basis were identified as a subcategory. Landfill gas, digester gas, and gasified MSW contain a family of chemicals referred to as siloxanes, which limit the application of HAP emission control technology.

Stationary combustion turbines of less than 1 MW rated peak power output were also identified as a subcategory. We believe these small stationary combustion turbines are few in number. These small stationary combustion turbines are sufficiently dissimilar from larger combustion turbines that we cannot evaluate the feasibility of emission control technology based on information concerning the larger turbines. To our knowledge, none of the smaller turbines use emission control technology to reduce HAP. Therefore, we believe it would be inappropriate to require HAP emission controls to be applied to them without further information on control technology performance.

Stationary combustion turbines can be classified as either diffusion flame or lean premix. We examined formaldehyde test data for both diffusion flame and lean premix stationary combustion turbines and observed that uncontrolled formaldehyde emissions for stationary lean premix combustion turbines are significantly lower than those of stationary diffusion flame combustion turbines. Due to the difference in the two technologies, we decided to establish subcategories for diffusion flame and lean premix stationary combustion turbines.

<sup>1</sup> See 68 FR 1276 (January 9, 2003) (Plywood and Composite Wood Products Proposed NESHAP) and docket number A-98-44 (White Papers submitted to EPA outlining the risk-based approaches).

We further investigated subcategorizing lean premix turbines based on fuel. At the time of proposal, EPA was not aware of the availability of distillate oil fired stationary combustion turbines that operated in the lean premix mode. We received comments indicating otherwise during the public comment period from combustion turbine manufacturers. We believe there is a difference in uncontrolled HAP emissions between natural gas and distillate oil for stationary lean premix combustion turbines. This is based on test data for stationary diffusion flame combustion turbines which clearly show there is a difference in the composition of uncontrolled HAP emissions between natural gas and distillate oil. We believe this also would apply to stationary lean premix combustion turbines. For stationary lean premix combustion turbines, NO<sub>x</sub> emissions also vary depending on which fuel is burned in the combustion process. Information from combustion turbine vendors indicate that NO<sub>x</sub> emission guarantees for distillate oil can be up to five times higher than the NO<sub>x</sub> emission guarantees for natural gas for stationary lean premix combustion turbines. Finally, the mass of total emissions may be similar for natural gas and distillate oil, but some pollutants such as formaldehyde are lower for distillate oil and other pollutants such as PAH and metals are higher for oil. For all practical purposes, uncontrolled natural gas metal emissions are nonexistent, while they are emitted in small quantities when burning distillate oil.

We expect that the majority of distillate oil burned in stationary combustion turbines will be fuel oil number 2. We recognize that stationary combustion turbine owners and operators may burn different varieties of distillate oil, however we believe that any other distillate oil combusted will be of similar quality and composition to fuel oil number 2. We do not anticipate that owners and operators will burn any other liquid based fuel that is more contaminated with metals than fuel oil number 2 and expect that most available liquid fuels that may be used in stationary combustion turbines will be similar and fairly consistent.

In recognition of the clear differences we found in the composition of HAP emissions depending on the fuel that is used, we have determined that it is appropriate to subcategorize further within stationary lean premix combustion turbines based on fuel use. In devising appropriate subcategories based on fuel use, we needed to consider that many combustion turbines

are configured both to use natural gas and distillate oil. These dual fuel units typically burn natural gas as their primary fuel, and only utilize distillate oil as a backup. Without some allowance for this limited backup use of distillate oil, these turbines might switch subcategories frequently, causing confusion for sources and complicating compliance demonstrations. To limit the frequency of switching between subcategories which would result from limited usage of distillate oil as a backup fuel, we have defined the lean premix gas-fired subcategory in a manner which permits turbines that fire gas using lean premix technology to remain in the subcategory if all turbines at the site in question fire oil no more than a total of 1000 hours during the calendar year. We believe this 1000 hour allowance will be sufficient to accommodate those situations where distillate oil is used only as a backup. The lean premix gas-fired turbines subcategory will be defined to include: (a) Each stationary combustion turbine which is equipped only to fire gas using lean premix technology, (b) each stationary combustion turbine which is equipped both to fire gas using lean premix technology and to fire oil, during any period when it is firing gas, and (c) each stationary combustion turbine which is equipped both to fire gas using lean premix technology and to fire oil, and is located at a major source where all stationary combustion turbines fire oil no more than an aggregate total of 1000 hours during the calendar year.

The lean premix oil-fired turbines subcategory will be defined to include: (a) each stationary combustion turbine which is equipped only to fire oil using lean premix technology, and (b) each stationary combustion turbine which is equipped both to fire oil using lean premix technology and to fire gas, and is located at a major source where all stationary combustion turbines fire oil more than an aggregate total of 1000 hours during the calendar year, during any period when it is firing oil. We do not know of any actual combustion turbines which would be in this subcategory, but this is possible because we have been advised that combustion turbines can be configured to burn oil using lean premix technology.

We further investigated subcategorizing diffusion flame turbines based on fuel. For diffusion flame turbines, test data show that HAP emissions vary depending on which fuel is burned. Formaldehyde emissions are in general lower for diffusion flame units firing distillate oil versus diffusion flame units firing natural gas. Emissions

data also show that NO<sub>x</sub> levels are higher for diffusion flame units firing distillate oil than diffusion flame units firing natural gas. Finally, other fuel differences between natural gas and distillate oil include higher levels of pollutants such as PAH and metals in the emissions of stationary diffusion flame combustion turbines burning distillate oil. Quantities of these pollutants are small for distillate oil; metal emissions from natural gas are at non-detectable levels. As previously indicated, we expect that most owners and operators of stationary combustion turbines will burn distillate oil of the form fuel oil number 2. However, we recognize that other liquid based fuels may be also be fired, but these fuels will be similar to fuel oil number 2, and do not expect owners and operators to burn any other fuel that is more contaminated with metals.

As in the case of the lean premix turbines, we concluded based on the clear differences in the composition of HAP emissions depending on the fuel that is used that it is appropriate to subcategorize further within stationary diffusion flame combustion turbines based on fuel use. As in the case of the lean premix turbines, we have included a 1000 hour per site allowance for limited backup use of distillate oil in order to limit the frequency that dual fuel turbines will switch subcategories. We believe this 1000 hour allowance will be sufficient to accommodate those situations where distillate oil is used only as a backup.

The diffusion flame gas-fired turbines subcategory will be defined to include: (a) Each stationary combustion turbine which is equipped only to fire gas using diffusion flame technology, (b) each stationary combustion turbine which is equipped both to fire gas using diffusion flame technology and to fire oil, during any period when it is firing gas, and (c) each stationary combustion turbine which is equipped both to fire gas using diffusion flame technology and to fire oil, and is located at a major source where all stationary combustion turbines fire oil no more than an aggregate total of 1000 hours during the calendar year.

The diffusion flame oil-fired turbines subcategory will be defined to include: (a) each stationary combustion turbine which is equipped only to fire oil using diffusion flame technology, and (b) each stationary combustion turbine which is equipped both to fire oil using diffusion flame technology and to fire gas, and is located at a major source where all stationary combustion turbines fire oil more than an aggregate total of 1000 hours during the calendar year, during

any period when it is firing oil. We expect that the vast majority of all stationary combustion turbines which are primarily oil-fired will be included in this subcategory.

Stationary combustion turbines located on the North Slope of Alaska have been identified as a subcategory due to operation limitations and uncertainties regarding the application of controls to these units. There are very few of these units, and none have installed emission controls for the reduction of HAP.

#### *B. What Are the Requirements for Stationary Combustion Turbines Located at Area Sources?*

The final rule does not apply to stationary combustion turbines located at an area source of HAP emissions. An area source is any source that is not a major source of HAP emissions. In developing our Urban Air Toxics Strategy, we identified area sources we believe warrant regulation to protect the environment and the public health and satisfy the statutory requirements in section 112 of the CAA pertaining to area sources. Stationary combustion turbines located at area sources were not included on that list. As a result, the final rule does not apply to these stationary combustion turbines.

#### *C. What Is the Affected Source?*

The final rule applies to any stationary combustion turbine located at a major source. Consequently, a stationary combustion turbine located at major sources of HAP emissions is the affected source under the final rule.

The General Provisions at 40 CFR 63.2 require us to generally adopt a broad definition of affected source, which includes all emission units within each subcategory that are located within the same contiguous area. However, § 63.2 also provides that we may adopt a narrower definition of affected source in instances where we determine that the broader definition would “create significant administrative, practical, or implementation problems” and “the different definition would resolve those problems.” This is such an instance.

Although we have taken some steps in the definition of subcategories to limit the frequency of switching between subcategories, we cannot eliminate the possibility that some individual turbines will be switched from one subcategory to another. Use of the broader definition of affected source specified by the General Provisions would require very complex aggregate compliance determinations because an individual turbine could be part of one affected source at one time and part of

a different affected source at another time. This would require that the contribution of each turbine to total emissions for all emission units within each subcategory be adjusted to reflect the proportionate time the unit was operating within that subcategory. Such complicated compliance determinations are impractical and, therefore, we have decided to adopt a definition which establishes each individual combustion turbine as the affected source.

#### *D. How Did We Determine the Basis and Level of the Emission Limitations for Existing Sources?*

As established in section 112 of the CAA, the MACT standards must be no less stringent than the MACT floor. The MACT floor for existing sources is the average emission limitation achieved by the best performing 12 percent of existing sources in the subcategory (or the best performing five existing sources in subcategories with fewer than 30 sources).

From the applicable judicial precedent, we can derive certain basic principles which we must follow in deriving the MACT floor. All HAP emitted by sources in the category or subcategory in question must be considered in determining the MACT floor. If a particular HAP is an appropriate surrogate for evaluating emission reductions which have been achieved for a group of HAP, the MACT floor may be expressed in terms of that HAP. However, we must explain our basis for concluding there is a relationship between control of emissions of the HAP we utilize to characterize the MACT floor and control of other HAP. If we determine that the MACT floor requires differing controls affecting more than one group of HAP, multiple measures of the MACT floor may be necessary.

In addition, when deriving the MACT floor for a particular category or subcategory, we must consider all measures which could result in reduction of HAP emissions. These measures will include potential installation of add-on control technology, but other operational modifications such as adjustment of equipment, revision of work practices, and material substitution should also be considered. Where emissions are relatively homogeneous across the sources in a category or subcategory, and any variation in HAP emissions which does occur cannot be readily attributed to differences in any factor which is susceptible to control by the owner or operator, the MACT floor for a particular HAP or group of HAP may be expressed in terms of reductions

achieved by use of potential add-on controls.

#### *Existing Lean Premix Combustion Turbines*

As explained above, we have established two subcategories of stationary lean premix combustion turbines, lean premix gas-fired turbines and lean premix oil-fired turbines. Emissions of each HAP are relatively homogeneous within each of these two subcategories, and any variation in HAP emissions cannot be readily controlled except by add-on control. To determine the MACT floor for both subcategories of existing stationary lean premix combustion turbines, the EPA's combustion turbine inventory database was consulted.

The inventory database provides population information on stationary combustion turbines in the United States (U.S.) and was constructed in order to support the development of the rule. Data in the inventory database are based on information from available databases, such as the Aerometric Information Retrieval System (AIRS), the Ozone Transport and Assessment Group (OTAG), and State and local agencies' databases. The first version of the database was released in 1997. Subsequent versions have been released reflecting additional or updated data. The most recent release of the database is version 4, released in November 1998.

The inventory database contains information on approximately 4,800 stationary combustion turbines. The current stationary combustion turbine population is estimated to be about 8,000 turbines. Therefore, the inventory database represents about 60 percent of the stationary combustion turbines in the U.S. At least 20 percent of those turbines are estimated to be lean premix combustion turbines, based on conversations with turbine manufacturers.

The information contained in the inventory database is believed to be representative of stationary combustion turbines primarily because of its comprehensiveness. The database includes both small and large stationary combustion turbines in different user segments. Forty-eight percent are “industrial,” 39 percent are “utility,” and 13 percent are “pipeline.” Note that independent power producers (IPP) are included in the utility and industrial segments.

We examined all of the information available to us including the inventory database to identify any operational modifications such as equipment adjustments or work practice revisions which might be associated with lower

HAP emissions. We were unsuccessful in identifying any such operational modifications. Therefore, we were unable to utilize any factors other than add-on controls in deriving the MACT floor.

Another approach we investigated to identify a MACT floor was to review the requirements in existing State regulations and permits. No State regulations exist for HAP emission limits for stationary combustion turbines. Only one State permit limitation for a single HAP (benzene) was identified. Therefore, we were unable to use State regulations or permits in deriving a MACT floor.

The only add-on control technology currently proven to reduce HAP emissions from stationary lean premix combustion turbines is an oxidation catalyst emission control device. At proposal, the inventory database indicated that no existing stationary lean premix combustion turbines were controlled with oxidation catalyst systems. During the public comment period, we received a test report where a lean premix combustion turbine burning natural gas was tested twice about 2 years apart with an oxidation catalyst in operation.

We estimate that about 1 percent of existing lean premix gas-fired turbines may have oxidation catalyst systems installed. Accordingly, the average of the best performing 12 percent is no emission reduction. Therefore, the MACT floor for existing lean premix gas-fired turbines for each individual HAP is no emission reduction.

For lean premix oil-fired turbines, we do not have any data indicating that turbines in this subcategory are in actual use, nor do we have data indicating that oxidation catalysts have been installed. Accordingly, the average emission limitation achieved by the best performing existing units in this subcategory for each individual HAP would also be no emission reduction.

To determine MACT for both subcategories of existing stationary lean premix combustion turbines, we evaluated regulatory alternatives more stringent than the MACT floor. We considered requiring the use of an oxidation catalyst emission control device. According to catalyst vendors, oxidation catalysts are currently being used on some existing lean premix stationary combustion turbines. In addition, we recently received a test report where testing was conducted on a lean premix unit with an oxidation catalyst. However, an analysis of the application of oxidation catalyst control to existing lean premix stationary combustion turbines showed that the

incremental cost per ton of HAP removed was excessive. We have not identified any operational modifications which are not currently in use for these turbines but might result in HAP reductions. Nor have we identified any technologies to control those metallic HAP which may be emitted during burning of distillate oil which are technologically feasible and cost-effective. For these reasons, we concluded that MACT for each individual HAP for existing sources in both subcategories of existing stationary lean premix combustion turbines is the same as the MACT floor, *i.e.*, no emission reduction.

#### Existing Diffusion Flame Combustion Turbines

As explained above, we have established two subcategories of stationary diffusion flame combustion turbines, diffusion flame gas-fired turbines and diffusion flame oil-fired turbines. We believe emissions of each HAP are relatively homogeneous within each of these two subcategories and any variation in HAP emissions cannot be readily controlled except by add-on control. To determine the MACT floor for both subcategories of existing stationary diffusion flame combustion turbines, we consulted the inventory database previously discussed in this preamble. At least 80 percent of those turbines are assumed to be diffusion flame combustion turbines, based on conversations with turbine manufacturers.

We investigated the use of operational modifications such as equipment adjustments and work practice revisions for stationary diffusion flame combustion turbines to determine if HAP reductions associated with such operational modifications might be relevant in deriving the MACT floor. We found no relevant references in the inventory database.

Most stationary diffusion flame combustion turbines will not operate unless preset conditions established by the manufacturer are met. Stationary diffusion flame combustion turbines, by manufacturer design, permit little operator involvement and there are no operating parameters, such as air/fuel ratio, for the operator to adjust. We concluded, therefore, that there are no specific operational modifications which could reduce HAP emissions or which could serve to identify a MACT floor.

Another approach we investigated to identify a MACT floor was to review the requirements in existing State regulations and permits. No State regulations exist for HAP emission

limits for stationary combustion turbines. Only one State permit limitation for a single HAP (benzene) was identified. Therefore, we were unable to use State regulations or permits in deriving a MACT floor.

We examined the inventory database for information on HAP emission control technology. There were no turbines controlled with oxidation catalyst systems in the inventory database so we used information supplied by catalyst vendors. There are about 200 oxidation catalyst systems installed in the U.S. The only control technology currently proven to reduce HAP emissions from stationary diffusion flame combustion turbines is an oxidation catalyst emission control device, such as a CO oxidation catalyst. These control devices are used to reduce CO emissions and are currently installed on several stationary combustion turbines.

Less than 3 percent of existing stationary diffusion flame gas-fired turbines in the U.S., based on information in our inventory database and information from catalyst vendors, are equipped with oxidation catalyst emission control devices. Therefore, the average emission limitation for the best performing 12 percent of existing diffusion flame gas-fired turbines is no emission reduction and the MACT floor for each individual HAP for existing turbines in this subcategory is also no emission reduction.

We estimate that less than 1 percent of existing stationary diffusion flame oil-fired turbines have oxidation catalyst systems installed. Thus, the average of the best performing 12 percent of existing diffusion flame oil-fired turbines is no emission reduction for organic HAP. No technologies to control metallic HAP have been installed on the existing turbines in this subcategory. Therefore, the MACT floor for each individual HAP for existing turbines in the diffusion flame oil-fired subcategory is no emission reduction.

To determine MACT for both subcategories of existing diffusion flame combustion turbines, regulatory alternatives more stringent than the MACT floor were evaluated. One beyond-the-floor regulatory option is requiring an oxidation catalyst. However, cost per ton estimates of oxidation catalyst emission control devices for control of total HAP from stationary diffusion flame combustion turbines were deemed excessive. In addition, we did not identify any operational modifications which are not currently in use for these turbines but might result in HAP reductions. Moreover, we did not identify any

technologies to control those metallic HAP which may be emitted during burning of distillate oil which are technologically feasible and cost-effective. For these reasons, MACT for each individual HAP for turbines in both subcategories of existing stationary diffusion flame combustion turbines is the same as the MACT floor, *i.e.*, no emission reduction.

*E. How Did We Determine the Basis and Level of the Emission Limitations and Operating Limitations for New Sources?*

For new sources, the MACT floor is defined as the emission control that is achieved in practice by the best controlled similar source. To be a similar source, a source should not have any characteristics that differ sufficiently to have a material effect on the feasibility of emission controls, but the source need not be in the same source category or subcategory.

We considered using a surrogate in order to reduce the costs associated with monitoring while at the same time being relatively sure that the pollutants the surrogate is supposed to represent are also controlled. We investigated the use of formaldehyde concentration as a surrogate for all organic HAP emissions. Formaldehyde is the HAP emitted in the highest concentrations from stationary combustion turbines. Formaldehyde, toluene, benzene, and acetaldehyde account for essentially all the mass of HAP emissions from the stationary combustion turbine exhaust, and emissions data show that these pollutants are equally controlled by an oxidation catalyst.

Information from testing conducted on a diffusion flame combustion turbine equipped with an oxidation catalyst control system indicated that the formaldehyde and acetaldehyde emission reduction efficiency achieved was 97 and 94 percent, respectively. Later, after review of an expert task group, the conclusion reached was that both formaldehyde and acetaldehyde were controlled at least 90 percent. In addition, emissions tests conducted on reciprocating internal combustion engines (RICE) at Colorado State University (CSU) in 1998 showed that the benzene emission reduction efficiency across an oxidation catalyst averaged 73 percent, and the toluene emission reduction averaged 77 percent for 16 runs at various engine conditions on a two-stroke lean burn engine. The toluene emission reduction efficiency across the oxidation catalyst averaged 85 percent for ten runs at various engine conditions on a compression ignition RICE. We would expect the emissions reductions efficiencies for benzene and

toluene from combustion turbines to be as high or higher than those reported for the CSU RICE tests since combustion turbines catalyst temperatures are generally higher. Finally, catalyst performance information obtained from a catalyst vendor indicated that the percent conversion for an oxidation catalyst system installed on combustion turbines did not vary significantly between formaldehyde, benzene, and toluene. The percent conversion was measured at 77, 72, and 71 for formaldehyde, benzene, and toluene, respectively. Although emissions reductions for large molecules may in theory be less than for formaldehyde, the above information shows that formaldehyde is a good surrogate for the most significant HAP pollutants emitted from combustion turbines as demonstrated by evaluating the reduction efficiency of larger, heavier molecules, hence taking differences in molecular density into account. In addition, emission data show that HAP emission levels and formaldehyde emission levels are related, in the sense that when emissions of one are low, emissions of the other are low and vice versa. This leads us to conclude that emission control technologies which lead to reductions in formaldehyde emissions will lead to reductions in organic HAP emissions. For the reasons provided above, it is appropriate to use formaldehyde as a surrogate for all organic HAP emissions.

*New Lean Premix Gas-Fired Turbines*

To determine the MACT floor for new stationary lean premix gas-fired turbines, we reviewed the emissions data we had available at proposal and additional test reports received during the comment period. In order to set the MACT floor for new sources in this subcategory, we chose the best performing turbine. Emissions of each HAP are relatively homogeneous within the subcategory of stationary lean premix gas-fired turbines and any variation in HAP emissions cannot be readily controlled except by add-on control. The best performing turbine is equipped with an oxidation catalyst.

The formaldehyde concentration from the best performing turbine was measured at the outlet of the control device using CARB 430. Concerns were raised during the public comment period that CARB 430 formaldehyde results can be biased low as compared to formaldehyde results obtained by FTIR. For a comprehensive discussion of test methods and the development of the correlation between CARB 430 and FTIR formaldehyde levels, please refer to the memorandum entitled "Review of

Test Methods and Data used to Quantify Formaldehyde Concentrations from Combustion Turbines" in the docket. A bias factor of 1.7 was, therefore, applied to the formaldehyde concentration of the best performing turbine. The best performing turbine was tested twice under the same conditions about 2 years apart where one test measured 19 ppbvd and the other test measured 91 ppbvd formaldehyde (numbers have been bias corrected). We determined that since both of these tests were performed under similar conditions but at different times, this represented the variability of the best performing unit and used the higher value as the MACT floor. The MACT floor for organic HAP for new stationary lean premix gas-fired turbines is, therefore, an emission limit of 91 ppbvd formaldehyde at 15 percent oxygen.

We recognize that our selection of an emission limit of 91 ppbvd formaldehyde is based on quite limited data. We think that each new combustion turbine in this subcategory should be able to achieve compliance with this limit if an oxidation catalyst is properly installed and operated. If actual emission data demonstrate that we are incorrect, and that sources which properly install and operate an oxidation catalyst cannot consistently achieve compliance, we will revise the standard accordingly.

No beyond-the-floor regulatory alternatives were identified for new lean premix gas-fired turbines. We are not aware of any add-on control devices which can reduce organic HAP emissions to levels lower than those resulting from the application of oxidation catalyst systems. We, therefore, determined that MACT for organic HAP emissions from new stationary lean premix gas-fired turbines is the same as the MACT floor, *i.e.*, an emission limit of 91 ppbvd formaldehyde at 15 percent oxygen.

*New Lean Premix Oil-Fired Turbines*

We do not have any tests for lean premix combustion turbines firing any other fuels besides natural gas. However, we expect that emissions of organic HAP will be controlled by installation of an oxidation catalyst on any units in this subcategory to a degree similar to lean premix gas-fired turbines and diffusion flame oil-fired turbines. We also expect that organic HAP emissions from lean premix oil-fired turbines would be equal to or less than organic HAP emissions from lean premix gas-fired turbines. We have these expectations based on the fact that dual-fuel units using oxidation catalyst systems operate on distillate oil and the



fact that catalyst vendors indicate that oxidation catalyst systems operate equally well on either fuel. Therefore, we used the best performing turbine from the lean premix gas-fired turbine subcategory to set the MACT floor for lean premix oil-fired turbines. As a result, the MACT floor for organic HAP for new stationary lean premix oil-fired turbines is an emission limit of 91 ppbvd formaldehyde at 15 percent oxygen.

We are not aware of any similar sources which are equipped with emission control devices that could also reduce emissions of metallic HAP. We also examined the inventory database in an attempt to identify any operating modifications which might reduce metal emissions, but could not identify any such practices. We also referred to the inventory database to determine if any similar sources are equipped with emission controls for the reduction of particulate matter (PM) which would also reduce metal emissions. No such units were found in the inventory database and none were identified by commenters during the public comment period. For this reason, the MACT floor for new stationary lean premix oil-fired turbines is no emission control for metallic HAP emissions.

We were unable to identify any beyond-the-floor regulatory alternatives for new stationary lean premix oil-fired turbines. We know of no emission control technology currently available which can reduce HAP emissions to levels lower than those achieved through use of an oxidation catalyst. We also have not identified any add-on controls for metallic HAP. We conclude, therefore, that MACT for new lean premix oil-fired turbines would be equivalent to the MACT floor, *i.e.*, an emission limit of 91 ppbvd formaldehyde at 15 percent oxygen organic HAP, and no emission reduction for metallic HAP.

#### New Diffusion Flame Gas-Fired Turbines

In the proposed rule, we requested sources to submit any HAP emissions test data available from stationary combustion turbines. After the proposal, we also contacted several State agencies to request emissions test data from diffusion flame combustion turbines. Due to the CARB advisory issued on April 28, 2000, which stated that formaldehyde emissions data where the NO<sub>x</sub> levels were greater than 50 ppmvd were suspect and should be flagged as non-quantitative, we conducted an analysis of existing diffusion flame emissions test data. Tests where the NO<sub>x</sub> emissions were greater than 50

ppm or tests where the NO<sub>x</sub> levels were unknown were excluded from our analysis. Most of the diffusion flame tests in the emissions database were unable to pass the screening. Therefore, we specifically requested States to provide test reports for diffusion flame combustion turbines where Method 320 was used, or CARB 430 was used and the NO<sub>x</sub> emissions were below 50 ppmvd. During the comment period we received three additional test reports for testing conducted on a total of five stationary diffusion flame combustion turbines.

To identify the MACT floor for new stationary diffusion flame gas-fired turbines, we based our analysis on the performance of the best turbine. Individual HAP emissions are relatively homogeneous within the subcategory of stationary diffusion flame gas-fired turbines and any variation in HAP emissions cannot be readily controlled except by add-on control. The best performing turbine in this subcategory is equipped with an oxidation catalyst.

As previously indicated, formaldehyde is the HAP emitted in the highest concentrations from stationary combustion turbines and data show control of organic HAP emissions and formaldehyde emissions are related. We have, therefore, concluded that formaldehyde is an appropriate surrogate for all organic HAP emissions.

Formaldehyde was measured by CARB 430 at the outlet of the oxidation catalyst. We applied a bias factor of 1.7 to the formaldehyde concentration obtained by CARB 430 for the best performing turbine. The corrected outlet concentration of formaldehyde from the best performing turbine was 15 ppbvd. We only have one controlled test for this turbine, but we expect that similar variability would be associated with this turbine as was associated with the best performing lean premix turbine. Therefore, applying a factor of 5 to the formaldehyde concentration measured at the outlet of the best performing diffusion flame turbine is appropriate to account for variability. Therefore, we would establish a formaldehyde emission limitation of 75 ppbvd based on the outlet of the control device. However, with a similar control system, we would expect that the emission limit should be no lower than the emission limit for lean premix turbines since diffusion flame turbines on average emit more HAP. The MACT floor for new stationary diffusion flame combustion gas-fired turbines is, therefore, an emission limit of 91 ppbvd formaldehyde at 15 percent oxygen.

We were unable to identify any beyond-the-floor regulatory alternatives

for new stationary diffusion flame gas-fired turbines. We know of no emission control technology currently available which can reduce organic HAP emissions to levels lower than that achieved through the use of an oxidation catalyst. We concluded, therefore, that MACT for organic HAP emissions from new diffusion flame stationary gas-fired turbines is equivalent to the MACT floor, *i.e.*, an emission limit of 91 ppbvd formaldehyde at 15 percent oxygen.

#### New Diffusion Flame Oil-Fired Turbines

To determine the MACT floor for new diffusion flame oil-fired turbines, we again based our analysis on the best performing turbine. Emissions of each individual HAP are relatively homogeneous within stationary diffusion flame oil-fired turbines and any variation in HAP emissions cannot be readily controlled except by add-on control. The best performing turbine in this subcategory is equipped with an oxidation catalyst.

As previously described in more detail, we are using formaldehyde as a surrogate for all organic HAP emissions. The formaldehyde was measured with EPA Method 0011 at the outlet of the control device. The EPA Method 0011 is similar to CARB 430 and the problems associated with CARB 430 are expected to be associated with EPA Method 0011. So again we applied a bias factor of 1.7 to the formaldehyde outlet concentration of the best performing diffusion flame oil-fired turbine. The corrected formaldehyde concentration from this turbine is 44 ppbvd. We only had one controlled test for this turbine, but would expect some variability as has been shown with other turbines. However, since formaldehyde emissions from distillate oil fired turbines are lower on average by a factor of 1.4, we do not believe that the MACT emission limit should be set higher than the emission limit for new stationary diffusion flame gas-fired turbines. Therefore, the MACT floor for organic HAP for new stationary diffusion flame oil-fired turbines is an emission limit of 91 ppbvd formaldehyde at 15 percent oxygen.

We examined the inventory database to identify any operating practices which could affect metal emissions. We were unable to identify any such practices. We also determined that no similar sources are equipped with emission control devices for the reduction of PM which could also reduce metal emissions. Therefore, the MACT floor for metallic HAP for new diffusion flame oil-fired turbines is no emission reduction.

To determine MACT for new stationary diffusion oil-fired turbines, we tried to identify beyond-the-floor options. There are currently no beyond-the-floor regulatory alternatives for this subcategory as we know of no emission control technology current available that can reduce organic HAP emissions to levels lower than that obtained with the use of an oxidation catalyst. We also have not identified any add-on controls for metallic HAP. We conclude, therefore, that MACT for new diffusion flame oil-fired turbines would be equivalent to the MACT floor, *i.e.*, an emission limit of 91 ppbvd formaldehyde at 15 percent oxygen organic HAP, and no emission reduction for metallic HAP.

#### Other Subcategories

Although the final rule will apply to all stationary combustion turbines located at major sources of HAP emissions, emergency stationary combustion turbines, stationary combustion turbines which burn landfill or digester gas equivalent to 10 percent or more of the gross heat input on an annual basis or where gasified MSW is used to generate 10 percent or more of the gross heat input to the stationary combustion turbine on an annual basis, stationary combustion turbines of less than 1 MW rated peak power output, and stationary combustion turbines located on the North Slope of Alaska are not required to meet the emission limitations or operating limitations.

For each of the other subcategories of stationary combustion turbines, we have concerns about the applicability of emission control technology. For example, emergency stationary combustion turbines operate infrequently. In addition, when called upon to operate they must respond immediately without failure and without lengthy startup periods. This infrequent operation limits the applicability of HAP emission control technology.

Landfill and digester gases contain a family of silicon based gases called siloxanes. Siloxanes are also a component of municipal waste. Combustion of siloxanes forms compounds that can foul post-combustion catalysts, rendering catalysts inoperable within a very short period of time. It is our judgment based on public comments that firing even 10 percent landfill or digester gas will cause fouling that will render the oxidation catalyst inoperable within a short period of time. Pretreatment of exhaust gases to remove siloxanes was investigated. However, no pretreatment

systems are in use and their long term effectiveness is unknown. We also considered fuel switching for this subcategory of turbines. Switching to a different fuel such as natural gas or diesel would potentially allow the turbine to apply an oxidation catalyst emission control device. However, fuel switching would defeat the purpose of using this type of fuel which would then either be allowed to escape uncontrolled or would be burned in a flare with no energy recovery. We believe that switching landfill or digester gas or gasified MSW to another fuel is inappropriate and is an environmentally inferior option.

For stationary combustion turbines of less than 1 MW rated peak power output, we have concerns about the effectiveness of scaling down the oxidation catalyst emission control technology. Just as there are often unforeseen problems associated with scaling up a technology, there can be problems associated with scaling down a technology.

Stationary combustion turbines located on the North Slope of Alaska have been identified as a subcategory due to operation limitations and uncertainties regarding the application of controls to these units. There are very few of these units; in addition, none have installed emission controls for the reduction of HAP.

As a result, we identified subcategories for each of these types of stationary combustion turbines and investigated MACT floors and MACT for each subcategory. As expected, since we identified these types of stationary combustion turbines as separate subcategories based on concerns about the applicability of emission control technology, we found no stationary combustion turbines in these subcategories using any emission control technology to reduce HAP emissions. As discussed above, we are not aware of any work practices that might constitute a MACT floor, nor did we find that the use of a particular fuel results in HAP emission reductions. The MACT floor, therefore, for each of these subcategories is no emission reduction.

Despite our concerns with the applicability of emission control technology, we examined the cost per ton of HAP removed for these subcategories. This analysis can be found in the docket (Docket ID No. OAR-2002-0060 (A-95-51)) for the final rule. Whether our concerns are warranted or not, we consider the incremental cost per ton of HAP removed excessive—primarily because of the very small reduction in HAP emissions that would result.

We also considered the non-air health, environmental, and energy impacts of an oxidation catalyst system, as discussed previously in this preamble, and concluded that there would be only a small energy impact and no non-air health or environmental impacts. However, as stated above, we did not adopt this regulatory option due to cost considerations and concerns about the applicability of this technology to these subcategories. We were not able to identify any other means of achieving HAP emission reduction for these subcategories.

As a result, for all of these reasons, we conclude that MACT for these subcategories is the MACT floor (*i.e.*, no emission reduction).

#### *F. How Did We Select the Initial Compliance Requirements?*

New and reconstructed sources complying with the emission limitation for formaldehyde emissions are required to conduct an initial performance test. The purpose of the initial test is to demonstrate initial compliance with the formaldehyde emission limitation.

#### *G. How Did We Select the Continuous Compliance Requirements?*

If you must comply with the emission limitations, continuous compliance with these requirements is required at all times except during startup, shutdown, and malfunction of your stationary combustion turbine. You are required to develop a startup, shutdown, and malfunction plan.

We considered requiring FTIR CEMS; however, we concluded that the costs of FTIR CEMS were excessive and were not yet demonstrated at the low formaldehyde levels of the standards. We considered requiring those sources to continuously monitor operating load to demonstrate continuous compliance because the data establishing the formaldehyde outlet concentration level are based on tests that were done at high loads. However, we believe that the performance of a stationary combustion turbine at high load is also indicative of its operation at lower loads. In fact, the operator can make no parameter adjustments that would lead to lower emissions.

For these reasons, EPA determined that it would be appropriate to require sources that comply with the emission limitation for formaldehyde emissions and that use an oxidation catalyst emission control device to continuously monitor the oxidation catalyst inlet temperature. Continuously monitoring the oxidation catalyst inlet temperature and maintaining this temperature within the range recommended by the

catalyst manufacturer will ensure proper operation of the oxidation catalyst emission control device and continuous compliance with the emission limitation for formaldehyde.

Sources that do not use an oxidation catalyst emission control device are required to petition the Administrator for approval of operating limitations or approval of no operating limitations.

#### *H. How Did We Select the Testing Methods To Measure These Low Concentrations of Formaldehyde?*

The final rule requires the use of Method 320 or ASTM D6348–03 to determine compliance with the emission limitation for formaldehyde. With regard to formaldehyde, we believe systems meeting the requirements of Method 320, a self-validating FTIR method, can be used to attain detection limits for formaldehyde concentrations well below the current emission limitations with a path length of 10 meters or less. Some of the older technology may require 100 or even 200 meter path lengths. We expect state-of-the-art digital signal processing (to reduce signal to noise ratio) would be needed. Method 320 also includes formaldehyde spike recovery criteria, which require spike recoveries of 70 to 130 percent.

While we believe FTIR systems can meet the requirements of Method 320 and measure formaldehyde concentrations at these low levels, we have limited experience with their use. As a result, we solicited comments on the ability and use of FTIR systems to meet the validation and quality assurance requirements of Method 320 for the purpose of determining compliance with the emission limitation for formaldehyde. Commenters were generally in agreement that Method 320 is the most accurate and reliable test method currently available to test for formaldehyde emissions from the stationary combustion turbine exhaust.

We are also allowing the use of ASTM D6348–03 in the final rule to determine compliance with the emission limitation for formaldehyde. As mentioned in the preamble to the proposed rule, the method was reviewed by the EPA as a potential alternative to Method 320. Suggested revisions to ASTM D6348–98 were sent to ASTM by the EPA that would allow the EPA to accept ASTM D6348–98 as an acceptable alternative. The ASTM has revised the method following EPA's suggested revisions. The EPA has determined that the revised method, ASTM D6348–03, "Standard Test Method for Determination of Gaseous Compounds by Extractive Direct Interface Fourier

Transform Infrared (FTIR) Spectroscopy," is an acceptable alternative to Method 320 for formaldehyde measurement.

As an alternative to Method 320, we proposed Method 323 for natural gas-fired sources. Method 323 uses the acetyl acetone colorimetric method to measure formaldehyde emissions in the exhaust of natural gas-fired, stationary combustion sources. Commenters did not support Method 323 and were concerned whether this method could provide reliable results. In addition, Method 323 has not been validated or demonstrated for use on stationary combustion turbines emitting low formaldehyde emissions. Therefore, Method 323 has not been included as a compliance method for formaldehyde in the final rule.

At proposal we believed CARB Method 430 and EPA SW–846 Method 0011 were capable of measuring formaldehyde concentrations at these low levels. Commenters were not supportive of these methods. In addition, CARB 430 is susceptible to interferences and sample loss contributes to large measurement variability. Method 0011 uses a similar analytical approach to CARB 430 and has many shortcomings and limited application opportunities. Accordingly, we are not including CARB 430 and Method 0011 in the final rule.

For these reasons, EPA has specified that Method 320 or ASTM D6348–03 should be used to determine compliance with the formaldehyde emission limitation in the final rule.

#### *I. How Did We Select the Notification, Recordkeeping and Reporting Requirements?*

The notification, recordkeeping, and reporting requirements are based on the NESHAP General Provisions of 40 CFR part 63.

#### **V. Summary of Environmental, Energy and Economic Impacts**

We estimate that 20 percent of the stationary combustion turbines affected by the final rule will be located at major sources. As a result, the environmental, energy, and economic impacts presented in this preamble reflect these estimates.

The outcome of the petition to delist certain subcategories which has been submitted to EPA could significantly affect the estimated impacts of the final rule. If approved, the delisting could significantly decrease the number of sources affected by the final rule and could affect the final emission estimates. Thus, the estimated impacts could change.

#### *A. What Are the Air Quality Impacts?*

The final rule will reduce total national HAP emissions by an estimated 98 tpy in the 5th year after the standards are promulgated. The emission reduction achieved by the final rule would be due to the sources that install an oxidation catalyst control system. We estimate that all new stationary combustion turbines will install oxidation catalyst control to comply with the standards.

To estimate air impacts, national HAP emissions in the absence of the final rule (*i.e.*, HAP emission baseline) were calculated. We then assumed a HAP reduction of 90 percent, achieved by using oxidation catalyst emission control devices to comply with the formaldehyde emission limitation, and applied this reduction to the baseline HAP emissions to estimate total national HAP emission reduction. The total national HAP emission reduction is the sum of formaldehyde, acetaldehyde, benzene, and toluene emissions reductions. In addition to HAP emission reduction, the final rule will reduce criteria air pollutant emissions, primarily CO emissions.

#### *B. What Are the Cost Impacts?*

The national total annualized cost of the final rule in the 5th year following promulgation is estimated to be about \$43 million. Approximately \$147,400 of that amount is the estimated annualized cost for monitoring, recordkeeping, and reporting. To calculate the annualized control costs, we obtained estimates of the capital costs of oxidation catalyst emission control devices from vendors. We then calculated the national total annualized costs of control for the new stationary combustion turbines installing oxidation catalyst emission control in the next 5 years. Our projection of new stationary combustion turbine capacity that will come online during the next 5 years is based on estimates from the Department of Energy indicating that 218 new stationary combustion turbines will begin operation between 2002 and 2007.

#### *C. What Are the Economic Impacts?*

The EPA prepared an economic impact analysis to evaluate the impacts the final rule would have on combustion turbines producers, consumers of goods and services produced by combustion turbines, and society. The analysis shows minimal changes in prices and output for products made by the 24 industries affected by the final rule. The price increase for affected output is less than 0.02 percent and the reduction in output

is less than 0.02 percent for each affected industry. Estimates of impacts on fuel markets show price increases of less than 0.06 percent for petroleum products and natural gas, and price increases of 0.53 and 0.72 percent for base-load and peak-load electricity, respectively. The price of coal is expected to decline by about 0.24 percent, and this is due to a small reduction in demand for this fuel type. Reductions in output are expected to be less than 0.67 percent for each energy type, including base-load and peak-load electricity. The social costs of the final rule are estimated at \$7.8 million (1998 dollars). Social costs include the compliance costs, but also include those costs that reflect changes in the national economy due to changes in consumer and producer behavior in response to the compliance costs associated with a regulation. In this case, changes in energy use among both consumers and producers to reduce the impact of the regulatory requirements of the final rule lead to the estimated social costs being somewhat less than the total annualized compliance cost estimate of \$43 million (1998\$). The primary reason for the lower social cost estimate is the increase in electricity supply generated by existing unaffected sources, which mostly offsets the impact of increased electricity prices to consumers.

For more information on these impacts, please refer to the economic impact analysis in the public docket.

#### *D. What Are the Non-Air Health, Environmental and Energy Impacts?*

The only energy requirement is a small increase in fuel consumption resulting from back pressure caused by operating an oxidation catalyst emission control device. This energy impact is small in comparison to the costs of other impacts. There are no known non-air environmental or health impacts as a result of the implementation of the final rule.

### **VI. Statutory and Executive Order Reviews**

#### *A. Executive Order 12866: Regulatory Planning and Review*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), we must determine whether a regulatory action is "significant" and, therefore, subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or

adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, we have determined that the final rule is a "significant regulatory action" within the meaning of the Executive Order. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations are included in the docket.

#### *B. Paperwork Reduction Act*

The information collection requirements in the final rule have been submitted for approval to the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The information requirements are not enforceable until OMB approves them.

The information requirements are based on notification, recordkeeping, and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to national emission standards. These recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to Agency policies set forth in 40 CFR part 2, subpart B.

The final rule will require maintenance inspections of the control devices but will not require any notifications or reports beyond those required by the General Provisions. The recordkeeping requirements require only the specific information needed to determine compliance.

The annual monitoring, reporting, and recordkeeping burden for this collection (averaged over the first 3 years after the effective date of the final rule) is estimated to be 2,448 labor hours per year at a total annual cost of \$333,450. This estimate includes a one-time performance test, semiannual excess

emission reports, maintenance inspections, notifications, and recordkeeping. Total capital/startup costs associated with the monitoring requirements over the 3-year period of the ICR are estimated at \$22,500, with no operation and maintenance costs.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9. When this ICR is approved by OMB, the Agency will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control number for the approved information collection requirements contained in this final rule.

#### *C. Regulatory Flexibility Act*

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with the final rule. The EPA has also determined that the final rule will not have a significant economic impact on a substantial number of small entities.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business whose parent company has fewer than 100 or 1,000 employees, or fewer than 4 billion kW-hr per year of electricity usage, depending on size definition for the affected North American Industry Classification System (NAICS) code; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. It should be noted that small entities in 6 NAICS codes are affected by the final rule, and the small

business definition applied to each industry by NAICS code is that listed in the Small Business Administration (SBA) size standards (13 CFR 121).

After considering the economic impacts of today's final rule on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. We have determined, based on the existing combustion turbines inventory, that 29 small entities out of 300 in the industries impacted by the final rule may be affected. None of these small entities will incur control costs associated with the final rule, but will incur monitoring, recordkeeping, and reporting costs and the costs of performance testing. These 29 small entities own 51 affected turbines in the existing combustion turbines inventory, which represents 2.5 percent of the existing turbines overall. Of these entities, 22 of these entities are small communities and 7 are affected small firms. None of the 29 affected small entities are estimated to have compliance costs that exceed one-half of 1 percent of their revenues. The median compliance costs to affected small entities is 0.07 percent of sales. In addition, the final rule is likely to also increase profits at the many small firms and increase revenues for the many small communities using combustion turbines that are not affected by the final rule as a result of the very slight increase in market prices.

It should be noted that it is likely that the ongoing deregulation of the electric power industry across the nation should minimize the rule's impacts on small entities. Increased competition in the electric power industry is forecasted to decrease the market price for wholesale electric power. It is likely that open access to the grid and lower market prices for electricity will make it less attractive for local communities to purchase and operate new combustion turbines. For more information on the results of the analysis of small entity impacts, please refer to the economic impact analysis in the docket.

Although the final rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of the final rule on small entities. In the final rule, the Agency is applying the minimum level of control and the minimum level of monitoring, recordkeeping, and reporting to affected sources allowed by the Clean Air Act. Existing stationary combustion turbines have no emission requirements. In addition, as mentioned earlier in the preamble, new turbines with capacities

under 1.0 MW are not subject to the final rule. This provision should reduce the level of small entity impacts.

#### *D. Unfunded Mandates Reform Act of 1995*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, we generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any 1 year. Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires us to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows us to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before we establish any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, we must develop a small government agency plan under section 203 of the UMRA. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that the final rule contains a Federal mandate that will not result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. The highest cost in any 1 year is less than \$43 million. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Although not required by the UMRA, we have consulted with State and local air pollution control officials. We also have held meetings on the rule with many of the stakeholders from

numerous individual companies, environmental groups, consultants and vendors, labor unions, and other interested parties. We have added materials to the Air docket to document those meetings.

In addition, we have determined that the final rule contains no regulatory requirements that might significantly or uniquely affect small governments. Therefore, today's rule is not subject to the requirements of section 203 of the UMRA.

#### *E. Executive Order 13132: Federalism*

Executive Order 13132 (64 FR 43255, August 10, 1999) requires us to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" are defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

The final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The final rule primarily affects private industry, and does not impose significant economic costs on State or local governments. Thus, Executive Order 13132 does not apply to the final rule.

Although not required by Executive Order 13132, we consulted with representatives of State and local governments to enable them to provide meaningful and timely input into the development of the final rule. This consultation took place during the ICCR committee meetings where members representing State and local governments participated in developing recommendations for EPA's combustion-related rules, including the final rule. The concerns raised by representatives of State and local governments were considered during the development of the final rule.

#### *F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

Executive Order 13175 (65 FR 67249, November 6, 2000) requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of

regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

The final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to the final rule.

#### *G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks*

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives.

We interpret Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5-501 of the Executive Order has the potential to influence the regulation. The final rule is not subject to Executive Order 13045 because it is based on technology performance and not on health or safety risks.

#### *H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

This rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 Fed. Reg. 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The basis for this determination is provided below.

The increase in petroleum product output, which includes increases in fuel production, is estimated at 0.013

percent, or about 2,003 barrels per day based on 2000 U.S. fuel production nationwide. The reduction in coal production is estimated at 0.00007 percent, or about 7,936 short tons per year based on 2000 U.S. coal production nationwide. The reduction in electricity output is estimated at 0.083 percent, or about 20.4 billion kilowatt-hours per year based on 2000 U.S. electricity production nationwide. Production of natural gas is expected to increase by 11.7 million cubic feet (ft<sup>3</sup>) per day. The maximum of all energy price increases, which include increases in natural gas prices as well as those for petroleum products, coal, and electricity, is estimated to be the 0.71 percent increase in peak-load electricity rates nationwide. Energy distribution costs may increase by roughly no more than the same amount as electricity rates. We expect that there will be no discernable impact on the import of foreign energy supplies, and no other adverse outcomes are expected to occur with regards to energy supplies. Also, the increase in cost of energy production should be minimal given the very small increase in fuel consumption resulting from back pressure related to operation of oxidation catalyst emission control devices. All of the estimates presented above account for some passthrough of costs to consumers as well as the direct cost impact to producers. For more information on these estimated energy effects, please refer to the economic impact analysis for the final rule. This analysis is available in the public docket.

No new combustion turbines with a capacity of less than 1.0 MW will be affected. Also, the control level applied to affected new combustion turbines is the minimum that can be applied consistent with the provisions of the Clean Air Act.

Therefore, we conclude that the final rule when implemented will not have a significant adverse effect on the supply, distribution, or use of energy.

#### *I. National Technology Transfer and Advancement Act*

As noted in the proposed rule, section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Public Law No. 104-113; 15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices) developed or

adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through annual reports to the Office of Management and Budget (OMB), with explanations when an agency does not use available and applicable voluntary consensus standards.

The final rule involves technical standards. The EPA cites the following standards in the final rule: EPA Methods 1, 1A, 3A, 3B, 4, and 320. Consistent with the NTTAA, EPA conducted searches to identify voluntary consensus standards in addition to these EPA methods. No applicable voluntary consensus standards were identified for EPA Method 1A. The search and review results have been documented and are placed in the docket (Docket ID No. OAR-2002-0060 (A-95-51)) for the final rule.

The search for emissions measurement procedures identified six voluntary consensus standards. The EPA determined that five of these six standards identified for measuring emissions of the HAP or surrogates subject to emission standards in the final rule were impractical alternatives to EPA test methods for the purposes of the rule. Therefore, EPA does not intend to adopt these standards for this purpose. (See Docket ID No. OAR-2002-0060 (A-95-51) for further information on the methods.)

The voluntary consensus standard ASTM D6348-03, "Standard Test Method for Determination of Gaseous Compounds by Extractive Direct Interface Fourier Transform Infrared (FTIR) Spectroscopy," is an acceptable alternative to EPA Method 320 for formaldehyde measurement provided that, in ASTM D6348-03 Annex A5 (Analyte Spiking Technique), the percent R must be greater than or equal to 70 and less than or equal to 130.

Section 63.6120 and Table 3 to subpart YYYY of the final rule list the EPA testing methods included in the regulation. Under §§ 63.7(f) and 63.8(f) of subpart A of the General Provisions, a source may apply to EPA for permission to use alternative test methods or alternative monitoring requirements in place of any of the EPA testing methods, performance specifications, or procedures.

#### *J. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a

rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing today's final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). The final rule will be effective on March 5, 2004.

#### List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: August 29, 2003.

**Marianne Lamont Horinko,**  
*Acting Administrator.*

■ For the reasons set out in the preamble, title 40, chapter I, part 63 of the Code of the Federal Regulations is amended as follows:

#### PART 63—[AMENDED]

■ 1. The authority citation for part 63 continues to read as follows:

**Authority:** 42 U.S.C. 7401, *et seq.*

■ 2. Part 63 is amended by adding subpart YYYY to read as follows:

#### Subpart YYYY—National Emission Standards for Hazardous Air Pollutants for Stationary Combustion Turbines

Sec.

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##### What This Subpart Covers

##### § 63.6080 What is the purpose of subpart YYYY?

Subpart YYYY establishes national emission limitations and operating limitations for hazardous air pollutants (HAP) emissions from stationary combustion turbines located at major sources of HAP emissions, and requirements to demonstrate initial and continuous compliance with the emission and operating limitations.

##### § 63.6085 Am I subject to this subpart?

You are subject to this subpart if you own or operate a stationary combustion turbine located at a major source of HAP emissions.

(a) Stationary combustion turbine means all equipment, including but not limited to the turbine, the fuel, air, lubrication and exhaust gas systems,

control systems (except emissions control equipment), and any ancillary components and sub-components comprising any simple cycle stationary combustion turbine, any regenerative/recuperative cycle stationary combustion turbine, the combustion turbine portion of any stationary cogeneration cycle combustion system, or the combustion turbine portion of any stationary combined cycle steam/electric generating system. Stationary means that the combustion turbine is not self propelled or intended to be propelled while performing its function, although it may be mounted on a vehicle for portability or transportability. Stationary combustion turbines covered by this subpart include simple cycle stationary combustion turbines, regenerative/recuperative cycle stationary combustion turbines, cogeneration cycle stationary combustion turbines, and combined cycle stationary combustion turbines. Stationary combustion turbines subject to this subpart do not include turbines located at a research or laboratory facility, if research is conducted on the turbine itself and the turbine is not being used to power other applications at the research or laboratory facility.

(b) A major source of HAP emissions is a contiguous site under common control that emits or has the potential to emit any single HAP at a rate of 10 tons (9.07 megagrams) or more per year or any combination of HAP at a rate of 25 tons (22.68 megagrams) or more per year, except that for oil and gas production facilities, a major source of HAP emissions is determined for each surface site.

##### § 63.6090 What parts of my plant does this subpart cover?

This subpart applies to each affected source.

(a) *Affected source.* An affected source is any existing, new, or reconstructed stationary combustion turbine located at a major source of HAP emissions.

(1) *Existing stationary combustion turbine.* A stationary combustion turbine is existing if you commenced construction or reconstruction of the stationary combustion turbine on or before January 14, 2003. A change in ownership of an existing stationary combustion turbine does not make that stationary combustion turbine a new or reconstructed stationary combustion turbine.

(2) *New stationary combustion turbine.* A stationary combustion turbine is new if you commenced construction of the stationary



combustion turbine after January 14, 2003.

(3) *Reconstructed stationary combustion turbine.* A stationary combustion turbine is reconstructed if you meet the definition of reconstruction in § 63.2 of subpart A of this part and reconstruction is commenced after January 14, 2003.

(b) *Subcategories with limited requirements.*

(1) A new or reconstructed stationary combustion turbine located at a major source which meets either of the following criteria does not have to meet the requirements of this subpart and of subpart A of this part except for the initial notification requirements of § 63.6145(d):

(i) The stationary combustion turbine is an emergency stationary combustion turbine; or

(ii) The stationary combustion turbine is located on the North Slope of Alaska.

(2) A stationary combustion turbine which burns landfill gas or digester gas equivalent to 10 percent or more of the gross heat input on an annual basis, or a stationary combustion turbine where gasified municipal solid waste (MSW) is used to generate 10 percent or more of the gross heat input on an annual basis does not have to meet the requirements of this subpart except for:

(i) The initial notification requirements of § 63.6145(d); and

(ii) Additional monitoring and reporting requirements as provided in § 63.6125(c) and § 63.6150.

(3) An existing, new, or reconstructed stationary combustion turbine with a rated peak power output of less than 1.0 megawatt (MW) at International Organization for Standardization (ISO) standard day conditions, which is located at a major source, does not have to meet the requirements of this subpart and of subpart A of this part. This determination applies to the capacities of individual combustion turbines, whether or not an aggregated group of combustion turbines has a common add-on air pollution control device. No initial notification is necessary, even if the unit appears to be subject to other requirements for initial notification. For example, a 0.75 MW emergency turbine would not have to submit an initial notification.

(4) Existing stationary combustion turbines in all subcategories do not have to meet the requirements of this subpart and of subpart A of this part. No initial notification is necessary for any existing stationary combustion turbine, even if a new or reconstructed turbine in the same category would require an initial notification.

(5) Combustion turbine engine test cells/stands do not have to meet the requirements of this subpart but may have to meet the requirements of subpart A of this part if subject to another subpart. No initial notification is necessary, even if the unit appears to be subject to other requirements for initial notification.

#### **§ 63.6092 Are duct burners and waste heat recovery units covered by subpart YYYY?**

No, duct burners and waste heat recovery units are considered steam generating units and are not covered under this subpart. In some cases, it may be difficult to separately monitor emissions from the turbine and duct burner, so sources are allowed to meet the required emission limitations with their duct burners in operation.

#### **§ 63.6095 When do I have to comply with this subpart?**

(a) *Affected sources.* (1) If you start up a new or reconstructed stationary combustion turbine which is a lean premix gas-fired stationary combustion turbine, a lean premix oil-fired stationary combustion turbine, a diffusion flame gas-fired stationary combustion turbine, or a diffusion flame oil-fired stationary combustion turbine as defined by this subpart on or before March 5, 2004, you must comply with the emission limitations and operating limitations in this subpart no later than March 5, 2004.

(2) If you start up a new or reconstructed stationary combustion turbine which is a lean premix gas-fired stationary combustion turbine, a lean premix oil-fired stationary combustion turbine, a diffusion flame gas-fired stationary combustion turbine, or a diffusion flame oil-fired stationary combustion turbine as defined by this subpart after March 5, 2004, you must comply with the emission limitations and operating limitations in this subpart upon startup of your affected source.

(b) *Area sources that become major sources.* If your new or reconstructed stationary combustion turbine is an area source that increases its emissions or its potential to emit such that it becomes a major source of HAP, it must be in compliance with any applicable requirements of this subpart when it becomes a major source.

(c) You must meet the notification requirements in § 63.6145 according to the schedule in § 63.6145 and in 40 CFR part 63, subpart A.

### **Emission and Operating Limitations**

#### **§ 63.6100 What emission and operating limitations must I meet?**

For each new or reconstructed stationary combustion turbine which is a lean premix gas-fired stationary combustion turbine, a lean premix oil-fired stationary combustion turbine, a diffusion flame gas-fired stationary combustion turbine, or a diffusion flame oil-fired stationary combustion turbine as defined by this subpart, you must comply with the emission limitations and operating limitations in Table 1 and Table 2 of this subpart.

### **General Compliance Requirements**

#### **§ 63.6105 What are my general requirements for complying with this subpart?**

(a) You must be in compliance with the emission limitations and operating limitations which apply to you at all times except during startup, shutdown, and malfunctions.

(b) If you must comply with emission and operating limitations, you must operate and maintain your stationary combustion turbine, oxidation catalyst emission control device or other air pollution control equipment, and monitoring equipment in a manner consistent with good air pollution control practices for minimizing emissions at all times including during startup, shutdown, and malfunction.

### **Testing and Initial Compliance Requirements**

#### **§ 63.6110 By what date must I conduct the initial performance tests or other initial compliance demonstrations?**

(a) You must conduct the initial performance tests or other initial compliance demonstrations in Table 4 of this subpart that apply to you within 180 calendar days after the compliance date that is specified for your stationary combustion turbine in § 63.6095 and according to the provisions in § 63.7(a)(2).

(b) An owner or operator is not required to conduct an initial performance test to determine outlet formaldehyde concentration on units for which a performance test has been previously conducted, but the test must meet all of the conditions described in paragraphs (b)(1) through (b)(5) of this section.

(1) The test must have been conducted using the same methods specified in this subpart, and these methods must have been followed correctly.

(2) The test must not be older than 2 years.

(3) The test must be reviewed and accepted by the Administrator.

(4) Either no process or equipment changes must have been made since the test was performed, or the owner or operator must be able to demonstrate that the results of the performance test, with or without adjustments, reliably demonstrate compliance despite process or equipment changes.

(5) The test must be conducted at any load condition within plus or minus 10 percent of 100 percent load.

**§ 63.6115 When must I conduct subsequent performance tests?**

Subsequent performance tests must be performed on an annual basis as specified in Table 3 of this subpart.

**§ 63.6120 What performance tests and other procedures must I use?**

(a) You must conduct each performance test in Table 3 of this subpart that applies to you.

(b) Each performance test must be conducted according to the requirements of the General Provisions at § 63.7(e)(1) and under the specific conditions in Table 2 of this subpart.

(c) Do not conduct performance tests or compliance evaluations during periods of startup, shutdown, or malfunction. Performance tests must be conducted at high load, defined as 100 percent plus or minus 10 percent.

(d) You must conduct three separate test runs for each performance test, and each test run must last at least 1 hour.

(e) If your stationary combustion turbine is not equipped with an oxidation catalyst, you must petition the Administrator for operating limitations that you will monitor to demonstrate compliance with the formaldehyde emission limitation in Table 1. You must measure these operating parameters during the initial performance test and continuously monitor thereafter. Alternatively, you may petition the Administrator for approval of no additional operating limitations. If you submit a petition under this section, you must not conduct the initial performance test until after the petition has been approved or disapproved by the Administrator.

(f) If your stationary combustion turbine is not equipped with an oxidation catalyst and you petition the Administrator for approval of additional operating limitations to demonstrate compliance with the formaldehyde emission limitation in Table 1, your petition must include the following information described in paragraphs (f)(1) through (5) of this section.

(1) Identification of the specific parameters you propose to use as additional operating limitations;

(2) A discussion of the relationship between these parameters and HAP emissions, identifying how HAP emissions change with changes in these parameters and how limitations on these parameters will serve to limit HAP emissions;

(3) A discussion of how you will establish the upper and/or lower values for these parameters which will establish the limits on these parameters in the operating limitations;

(4) A discussion identifying the methods you will use to measure and the instruments you will use to monitor these parameters, as well as the relative accuracy and precision of these methods and instruments; and

(5) A discussion identifying the frequency and methods for recalibrating the instruments you will use for monitoring these parameters.

(g) If you petition the Administrator for approval of no additional operating limitations, your petition must include the information described in paragraphs (g)(1) through (7) of this section.

(1) Identification of the parameters associated with operation of the stationary combustion turbine and any emission control device which could change intentionally (e.g., operator adjustment, automatic controller adjustment, etc.) or unintentionally (e.g., wear and tear, error, etc.) on a routine basis or over time;

(2) A discussion of the relationship, if any, between changes in the parameters and changes in HAP emissions;

(3) For the parameters which could change in such a way as to increase HAP emissions, a discussion of why establishing limitations on the parameters is not possible;

(4) For the parameters which could change in such a way as to increase HAP emissions, a discussion of why you could not establish upper and/or lower values for the parameters which would establish limits on the parameters as operating limitations;

(5) For the parameters which could change in such a way as to increase HAP emissions, a discussion identifying the methods you could use to measure them and the instruments you could use to monitor them, as well as the relative accuracy and precision of the methods and instruments;

(6) For the parameters, a discussion identifying the frequency and methods for recalibrating the instruments you could use to monitor them; and

(7) A discussion of why, from your point of view, it is infeasible,

unreasonable or unnecessary to adopt the parameters as operating limitations.

**§ 63.6125 What are my monitor installation, operation, and maintenance requirements?**

(a) If you are operating a stationary combustion turbine that is required to comply with the formaldehyde emission limitation and you use an oxidation catalyst emission control device, you must monitor on a continuous basis your catalyst inlet temperature in order to comply with the operating limitations in Table 2 and as specified in Table 5 of this subpart.

(b) If you are operating a stationary combustion turbine that is required to comply with the formaldehyde emission limitation and you are not using an oxidation catalyst, you must continuously monitor any parameters specified in your approved petition to the Administrator, in order to comply with the operating limitations in Table 2 and as specified in Table 5 of this subpart.

(c) If you are operating a stationary combustion turbine which fires landfill gas or digester gas equivalent to 10 percent or more of the gross heat input on an annual basis, or a stationary combustion turbine where gasified MSW is used to generate 10 percent or more of the gross heat input on an annual basis, you must monitor and record your fuel usage daily with separate fuel meters to measure the volumetric flow rate of each fuel. In addition, you must operate your turbine in a manner which minimizes HAP emissions.

(d) If you are operating a lean premix gas-fired stationary combustion turbine or a diffusion flame gas-fired stationary combustion turbine as defined by this subpart, and you use any quantity of distillate oil to fire any new or existing stationary combustion turbine which is located at the same major source, you must monitor and record your distillate oil usage daily for all new and existing stationary combustion turbines located at the major source with a non-resettable hour meter to measure the number of hours that distillate oil is fired.

**§ 63.6130 How do I demonstrate initial compliance with the emission and operating limitations?**

(a) You must demonstrate initial compliance with each emission and operating limitation that applies to you according to Table 4 of this subpart.

(b) You must submit the Notification of Compliance Status containing results of the initial compliance demonstration according to the requirements in § 63.6145(f).

## Continuous Compliance Requirements

### **§ 63.6135 How do I monitor and collect data to demonstrate continuous compliance?**

(a) Except for monitor malfunctions, associated repairs, and required quality assurance or quality control activities (including, as applicable, calibration checks and required zero and span adjustments of the monitoring system), you must conduct all parametric monitoring at all times the stationary combustion turbine is operating.

(b) Do not use data recorded during monitor malfunctions, associated repairs, and required quality assurance or quality control activities for meeting the requirements of this subpart, including data averages and calculations. You must use all the data collected during all other periods in assessing the performance of the control device or in assessing emissions from the new or reconstructed stationary combustion turbine.

### **§ 63.6140 How do I demonstrate continuous compliance with the emission and operating limitations?**

(a) You must demonstrate continuous compliance with each emission limitation and operating limitation in Table 1 and Table 2 of this subpart according to methods specified in Table 5 of this subpart.

(b) You must report each instance in which you did not meet each emission limitation or operating limitation. You must also report each instance in which you did not meet the requirements in Table 7 of this subpart that apply to you. These instances are deviations from the emission and operating limitations in this subpart. These deviations must be reported according to the requirements in § 63.6150.

(c) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, and malfunction are not violations if you have operated your stationary combustion turbine in full conformity with all provisions of your startup, shutdown, and malfunction plan, and you have otherwise satisfied the general duty to minimize emissions established by § 63.6(e)(1)(i).

## Notifications, Reports, and Records

### **§ 63.6145 What notifications must I submit and when?**

(a) You must submit all of the notifications in §§ 63.7(b) and (c), 63.8(e), 63.8(f)(4), and 63.9(b) and (h) that apply to you by the dates specified.

(b) As specified in § 63.9(b)(2), if you start up your new or reconstructed stationary combustion turbine before

March 5, 2004, you must submit an Initial Notification not later than 120 calendar days after March 5, 2004.

(c) As specified in § 63.9(b), if you start up your new or reconstructed stationary combustion turbine on or after March 5, 2004, you must submit an Initial Notification not later than 120 calendar days after you become subject to this subpart.

(d) If you are required to submit an Initial Notification but are otherwise not affected by the emission limitation requirements of this subpart, in accordance with § 63.6090(b), your notification must include the information in § 63.9(b)(2)(i) through (v) and a statement that your new or reconstructed stationary combustion turbine has no additional emission limitation requirements and must explain the basis of the exclusion (for example, that it operates exclusively as an emergency stationary combustion turbine).

(e) If you are required to conduct an initial performance test, you must submit a notification of intent to conduct an initial performance test at least 60 calendar days before the initial performance test is scheduled to begin as required in § 63.7(b)(1).

(f) If you are required to comply with the emission limitation for formaldehyde, you must submit a Notification of Compliance Status according to § 63.9(h)(2)(ii). For each performance test required to demonstrate compliance with the emission limitation for formaldehyde, you must submit the Notification of Compliance Status, including the performance test results, before the close of business on the 60th calendar day following the completion of the performance test.

### **§ 63.6150 What reports must I submit and when?**

(a) Anyone who owns or operates a stationary combustion turbine which must meet the emission limitation for formaldehyde must submit a semiannual compliance report according to Table 6 of this subpart. The semiannual compliance report must contain the information described in paragraphs (a)(1) through (a)(4) of this section. The semiannual compliance report must be submitted by the dates specified in paragraphs (b)(1) through (b)(5) of this section, unless the Administrator has approved a different schedule.

(1) Company name and address.

(2) Statement by a responsible official, with that official's name, title, and signature, certifying the accuracy of the content of the report.

(3) Date of report and beginning and ending dates of the reporting period.

(4) For each deviation from an emission limitation, the compliance report must contain the information in paragraphs (a)(4)(i) through (a)(4)(iii) of this section.

(i) The total operating time of each stationary combustion turbine during the reporting period.

(ii) Information on the number, duration, and cause of deviations (including unknown cause, if applicable), as applicable, and the corrective action taken.

(iii) Information on the number, duration, and cause for monitor downtime incidents (including unknown cause, if applicable, other than downtime associated with zero and span and other daily calibration checks).

(b) Dates of submittal for the semiannual compliance report are provided in (b)(1) through (b)(5) of this section.

(1) The first semiannual compliance report must cover the period beginning on the compliance date specified in § 63.6095 and ending on June 30 or December 31, whichever date is the first date following the end of the first calendar half after the compliance date specified in § 63.6095.

(2) The first semiannual compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date follows the end of the first calendar half after the compliance date that is specified in § 63.6095.

(3) Each subsequent semiannual compliance report must cover the semiannual reporting period from January 1 through June 30 or the semiannual reporting period from July 1 through December 31.

(4) Each subsequent semiannual compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date is the first date following the end of the semiannual reporting period.

(5) For each stationary combustion turbine that is subject to permitting regulations pursuant to 40 CFR part 70 or 71, and if the permitting authority has established the date for submitting annual reports pursuant to 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), you may submit the first and subsequent compliance reports according to the dates the permitting authority has established instead of according to the dates in paragraphs (b)(1) through (4) of this section.

(c) If you are operating as a stationary combustion turbine which fires landfill gas or digester gas equivalent to 10 percent or more of the gross heat input on an annual basis, or a stationary

combustion turbine where gasified MSW is used to generate 10 percent or more of the gross heat input on an annual basis, you must submit an annual report according to Table 6 of this subpart by the date specified unless the Administrator has approved a different schedule, according to the information described in paragraphs (d)(1) through (5) of this section. You must report the data specified in (c)(1) through (c)(3) of this section.

(1) Fuel flow rate of each fuel and the heating values that were used in your calculations. You must also demonstrate that the percentage of heat input provided by landfill gas, digester gas, or gasified MSW is equivalent to 10 percent or more of the total fuel consumption on an annual basis.

(2) The operating limits provided in your federally enforceable permit, and any deviations from these limits.

(3) Any problems or errors suspected with the meters.

(d) Dates of submittal for the annual report are provided in (d)(1) through (d)(5) of this section.

(1) The first annual report must cover the period beginning on the compliance date specified in § 63.6095 and ending on December 31.

(2) The first annual report must be postmarked or delivered no later than January 31.

(3) Each subsequent annual report must cover the annual reporting period from January 1 through December 31.

(4) Each subsequent annual report must be postmarked or delivered no later than January 31.

(5) For each stationary combustion turbine that is subject to permitting regulations pursuant to 40 CFR part 70 or 71, and if the permitting authority has established the date for submitting annual reports pursuant to 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), you may submit the first and subsequent compliance reports according to the dates the permitting authority has established instead of according to the dates in paragraphs (d)(1) through (4) of this section.

(e) If you are operating a lean premix gas-fired stationary combustion turbine or a diffusion flame gas-fired stationary combustion turbine as defined by this subpart, and you use any quantity of distillate oil to fire any new or existing stationary combustion turbine which is located at the same major source, you must submit an annual report according to Table 6 of this subpart by the date specified unless the Administrator has approved a different schedule, according to the information described in paragraphs (d)(1) through (5) of this section. You must report the data

specified in (e)(1) through (e)(3) of this section.

(1) The number of hours distillate oil was fired by each new or existing stationary combustion turbine during the reporting period.

(2) The operating limits provided in your federally enforceable permit, and any deviations from these limits.

(3) Any problems or errors suspected with the meters.

#### **§ 63.6155 What records must I keep?**

(a) You must keep the records as described in paragraphs (a)(1) through (5).

(1) A copy of each notification and report that you submitted to comply with this subpart, including all documentation supporting any Initial Notification or Notification of Compliance Status that you submitted, according to the requirements in § 63.10(b)(2)(xiv).

(2) Records of performance tests and performance evaluations as required in § 63.10(b)(2)(viii).

(3) Records of the occurrence and duration of each startup, shutdown, or malfunction as required in § 63.10(b)(2)(i).

(4) Records of the occurrence and duration of each malfunction of the air pollution control equipment, if applicable, as required in § 63.10(b)(2)(ii).

(5) Records of all maintenance on the air pollution control equipment as required in § 63.10(b)(iii).

(b) If you are operating a stationary combustion turbine which fires landfill gas, digester gas or gasified MSW equivalent to 10 percent or more of the gross heat input on an annual basis, or if you are operating a lean premix gas-fired stationary combustion turbine or a diffusion flame gas-fired stationary combustion turbine as defined by this subpart, and you use any quantity of distillate oil to fire any new or existing stationary combustion turbine which is located at the same major source, you must keep the records of your daily fuel usage monitors.

(c) You must keep the records required in Table 5 of this subpart to show continuous compliance with each operating limitation that applies to you.

#### **§ 63.6160 In what form and how long must I keep my records?**

(a) You must maintain all applicable records in such a manner that they can be readily accessed and are suitable for inspection according to § 63.10(b)(1).

(b) As specified in § 63.10(b)(1), you must keep each record for 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record.

(c) You must retain your records of the most recent 2 years on site or your records must be accessible on site. Your records of the remaining 3 years may be retained off site.

#### **Other Requirements and Information**

##### **§ 63.6165 What parts of the General Provisions apply to me?**

Table 7 of this subpart shows which parts of the General Provisions in § 63.1 through 15 apply to you.

##### **§ 63.6170 Who implements and enforces this subpart?**

(a) This subpart is implemented and enforced by the U.S. EPA or a delegated authority such as your State, local, or tribal agency. If the EPA Administrator has delegated authority to your State, local, or tribal agency, then that agency (as well as the U.S. EPA) has the authority to implement and enforce this subpart. You should contact your EPA Regional Office to find out whether this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under section 40 CFR part 63, subpart E, the authorities contained in paragraph (c) of this section are retained by the EPA Administrator and are not transferred to the State, local, or tribal agency.

(c) The authorities that will not be delegated to State, local, or tribal agencies are:

(1) Approval of alternatives to the emission limitations or operating limitations in § 63.6100 under § 63.6(g).

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(3) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.90.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

(5) Approval of a performance test which was conducted prior to the effective date of the rule to determine outlet formaldehyde concentration, as specified in § 63.6110(b).

##### **§ 63.6175 What definitions apply to this subpart?**

Terms used in this subpart are defined in the CAA; in 40 CFR 63.2, the General Provisions of this part; and in this section:

*Area source* means any stationary source of HAP that is not a major source as defined in this part.

*Associated equipment* as used in this subpart and as referred to in section 112(n)(4) of the CAA, means equipment associated with an oil or natural gas

exploration or production well, and includes all equipment from the well bore to the point of custody transfer, except glycol dehydration units, storage vessels with potential for flash emissions, combustion turbines, and stationary reciprocating internal combustion engines.

CAA means the Clean Air Act (42 U.S.C. 7401 *et seq.*, as amended by Public Law 101-549, 104 Stat. 2399).

*Cogeneration cycle stationary combustion turbine* means any stationary combustion turbine that recovers heat from the stationary combustion turbine exhaust gases using an exhaust heat exchanger, such as a heat recovery steam generator.

*Combined cycle stationary combustion turbine* means any stationary combustion turbine that recovers heat from the stationary combustion turbine exhaust gases using an exhaust heat exchanger to generate steam for use in a steam turbine.

*Combustion turbine engine test cells/stands* means engine test cells/stands, as defined in subpart PPPPP of this part, that test stationary combustion turbines.

*Compressor station* means any permanent combination of compressors that move natural gas at increased pressure from fields, in transmission pipelines, or into storage.

*Custody transfer* means the transfer of hydrocarbon liquids or natural gas: after processing and/or treatment in the producing operations, or from storage vessels or automatic transfer facilities or other such equipment, including product loading racks, to pipelines or any other forms of transportation. For the purposes of this subpart, the point at which such liquids or natural gas enters a natural gas processing plant is a point of custody transfer.

*Deviation* means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

- (1) Fails to meet any requirement or obligation established by this subpart, including but not limited to any emission limitation or operating limitation;
- (2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit;
- (3) Fails to meet any emission limitation or operating limitation in this subpart during malfunction, regardless of whether or not such failure is permitted by this subpart; or
- (4) Fails to conform to any provision of the applicable startup, shutdown, or malfunction plan, or to satisfy the

general duty to minimize emissions established by § 63.6(e)(1)(i).

*Diffusion flame gas-fired stationary combustion turbine* means:

- (1)(i) Each stationary combustion turbine which is equipped only to fire gas using diffusion flame technology,
- (ii) Each stationary combustion turbine which is equipped both to fire gas using diffusion flame technology and to fire oil, during any period when it is firing gas, and
- (iii) Each stationary combustion turbine which is equipped both to fire gas using diffusion flame technology and to fire oil, and is located at a major source where all new, reconstructed, and existing stationary combustion turbines fire oil no more than an aggregate total of 1000 hours during the calendar year.

(2) Diffusion flame gas-fired stationary combustion turbines do not include:

- (i) Any emergency stationary combustion turbine,
- (ii) Any stationary combustion turbine located on the North Slope of Alaska, or
- (iii) Any stationary combustion turbine burning landfill gas or digester gas equivalent to 10 percent or more of the gross heat input on an annual basis, or any stationary combustion turbine where gasified MSW is used to generate 10 percent or more of the gross heat input on an annual basis.

*Diffusion flame oil-fired stationary combustion turbine* means:

- (1)(i) Each stationary combustion turbine which is equipped only to fire oil using diffusion flame technology, and
- (ii) Each stationary combustion turbine which is equipped both to fire oil using diffusion flame technology and to fire gas, and is located at a major source where all new, reconstructed, and existing stationary combustion turbines fire oil more than an aggregate total of 1000 hours during the calendar year, during any period when it is firing oil.

(2) Diffusion flame oil-fired stationary combustion turbines do not include:

- (i) Any emergency stationary combustion turbine, or
- (ii) Any stationary combustion turbine located on the North Slope of Alaska.

*Diffusion flame technology* means a configuration of a stationary combustion turbine where fuel and air are injected at the combustor and are mixed only by diffusion prior to ignition.

*Digester gas* means any gaseous by-product of wastewater treatment typically formed through the anaerobic decomposition of organic waste materials and composed principally of methane and CO<sub>2</sub>.

*Distillate oil* means any liquid obtained from the distillation of

petroleum with a boiling point of approximately 150 to 360 degrees Celsius. One commonly used form is fuel oil number 2.

*Emergency stationary combustion turbine* means any stationary combustion turbine that operates in an emergency situation. Examples include stationary combustion turbines used to produce power for critical networks or equipment (including power supplied to portions of a facility) when electric power from the local utility is interrupted, or stationary combustion turbines used to pump water in the case of fire or flood, etc. Emergency stationary combustion turbines do not include stationary combustion turbines used as peaking units at electric utilities or stationary combustion turbines at industrial facilities that typically operate at low capacity factors. Emergency stationary combustion turbines may be operated for the purpose of maintenance checks and readiness testing, provided that the tests are required by the manufacturer, the vendor, or the insurance company associated with the turbine. Required testing of such units should be minimized, but there is no time limit on the use of emergency stationary combustion turbines.

*Glycol dehydration unit* means a device in which a liquid glycol (including, but not limited to, ethylene glycol, diethylene glycol, or triethylene glycol) absorbent directly contacts a natural gas stream and absorbs water in a contact tower or absorption column (absorber). The glycol contacts and absorbs water vapor and other gas stream constituents from the natural gas and becomes "rich" glycol. This glycol is then regenerated in the glycol dehydration unit reboiler. The "lean" glycol is then recycled.

*Hazardous air pollutant (HAP)* means any air pollutant listed in or pursuant to section 112(b) of the CAA.

*ISO standard day conditions* means 288 degrees Kelvin (15°C), 60 percent relative humidity and 101.3 kilopascals pressure.

*Landfill gas* means a gaseous by-product of the land application of municipal refuse typically formed through the anaerobic decomposition of waste materials and composed principally of methane and CO<sub>2</sub>.

*Lean premix gas-fired stationary combustion turbine* means:

- (1)(i) Each stationary combustion turbine which is equipped only to fire gas using lean premix technology,
- (ii) Each stationary combustion turbine which is equipped both to fire gas using lean premix technology and to

fire oil, during any period when it is firing gas, and

(iii) Each stationary combustion turbine which is equipped both to fire gas using lean premix technology and to fire oil, and is located at a major source where all new, reconstructed, and existing stationary combustion turbines fire oil no more than an aggregate total of 1000 hours during the calendar year.

(2) Lean premix gas-fired stationary combustion turbines do not include:

(i) Any emergency stationary combustion turbine,

(ii) Any stationary combustion turbine located on the North Slope of Alaska, or

(iii) Any stationary combustion turbine burning landfill gas or digester gas equivalent to 10 percent or more of the gross heat input on an annual basis, or any stationary combustion turbine where gasified MSW is used to generate 10 percent or more of the gross heat input on an annual basis.

*Lean premix oil-fired stationary combustion turbine* means:

(1)(i) Each stationary combustion turbine which is equipped only to fire oil using lean premix technology, and

(ii) Each stationary combustion turbine which is equipped both to fire oil using lean premix technology and to fire gas, and is located at a major source where all new, reconstructed, and existing stationary combustion turbines fire oil more than an aggregate total of 1000 hours during the calendar year, during any period when it is firing oil.

(2) Lean premix oil-fired stationary combustion turbines do not include:

(i) Any emergency stationary combustion turbine, or

(ii) Any stationary combustion turbine located on the North Slope of Alaska.

*Lean premix technology* means a configuration of a stationary combustion turbine where the air and fuel are thoroughly mixed to form a lean mixture for combustion in the combustor. Mixing may occur before or in the combustion chamber.

*Major source*, as used in this subpart, shall have the same meaning as in § 63.2, except that:

(1) Emissions from any oil or gas exploration or production well (with its associated equipment (as defined in this section)) and emissions from any pipeline compressor station or pump station shall not be aggregated with emissions from other similar units, to determine whether such emission points or stations are major sources, even when emission points are in a contiguous area or under common control;

(2) For oil and gas production facilities, emissions from processes, operations, or equipment that are not

part of the same oil and gas production facility, as defined in this section, shall not be aggregated;

(3) For production field facilities, only HAP emissions from glycol dehydration units, storage vessel with the potential for flash emissions, combustion turbines and reciprocating internal combustion engines shall be aggregated for a major source determination; and

(4) Emissions from processes, operations, and equipment that are not part of the same natural gas transmission and storage facility, as defined in this section, shall not be aggregated.

*Malfunction* means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner which causes or has the potential to cause the emission limitations in this standard to be exceeded. Failures that are caused in part by poor maintenance or careless operation are not malfunctions.

*Municipal solid waste* as used in this subpart is as defined in § 60.1465 of Subpart AAAA of 40 CFR Part 60, New Source Performance Standards for Small Municipal Waste Combustion Units.

*Natural gas* means a naturally occurring mixture of hydrocarbon and non-hydrocarbon gases found in geologic formations beneath the Earth's surface, of which the principal constituent is methane. May be field or pipeline quality. For the purposes of this subpart, the definition of natural gas includes similarly constituted fuels such as field gas, refinery gas, and syngas.

*Natural gas transmission* means the pipelines used for the long distance transport of natural gas (excluding processing). Specific equipment used in natural gas transmission includes the land, mains, valves, meters, boosters, regulators, storage vessels, dehydrators, compressors, and their driving units and appurtenances, and equipment used transporting gas from a production plant, delivery point of purchased gas, gathering system, storage area, or other wholesale source of gas to one or more distribution area(s).

*Natural gas transmission and storage facility* means any grouping of equipment where natural gas is processed, compressed, or stored prior to entering a pipeline to a local distribution company or (if there is no local distribution company) to a final end user. Examples of a facility for this source category are: an underground natural gas storage operation; or a natural gas compressor station that receives natural gas via pipeline, from

an underground natural gas storage operation, or from a natural gas processing plant. The emission points associated with these phases include, but are not limited to, process vents. Processes that may have vents include, but are not limited to, dehydration and compressor station engines. Facility, for the purpose of a major source determination, means natural gas transmission and storage equipment that is located inside the boundaries of an individual surface site (as defined in this section) and is connected by ancillary equipment, such as gas flow lines or power lines. Equipment that is part of a facility will typically be located within close proximity to other equipment located at the same facility. Natural gas transmission and storage equipment or groupings of equipment located on different gas leases, mineral fee tracts, lease tracts, subsurface unit areas, surface fee tracts, or surface lease tracts shall not be considered part of the same facility.

*North Slope of Alaska* means the area north of the Arctic Circle (latitude 66.5 degrees North).

*Oil and gas production facility* as used in this subpart means any grouping of equipment where hydrocarbon liquids are processed, upgraded (*i.e.*, remove impurities or other constituents to meet contract specifications), or stored prior to the point of custody transfer; or where natural gas is processed, upgraded, or stored prior to entering the natural gas transmission and storage source category. For purposes of a major source determination, facility (including a building, structure, or installation) means oil and natural gas production and processing equipment that is located within the boundaries of an individual surface site as defined in this section. Equipment that is part of a facility will typically be located within close proximity to other equipment located at the same facility. Pieces of production equipment or groupings of equipment located on different oil and gas leases, mineral fee tracts, lease tracts, subsurface or surface unit areas, surface fee tracts, surface lease tracts, or separate surface sites, whether or not connected by a road, waterway, power line or pipeline, shall not be considered part of the same facility. Examples of facilities in the oil and natural gas production source category include, but are not limited to, well sites, satellite tank batteries, central tank batteries, a compressor station that transports natural gas to a natural gas processing plant, and natural gas processing plants.

*Oxidation catalyst emission control device* means an emission control

device that incorporates catalytic oxidation to reduce CO emissions.

*Potential to emit* means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the stationary source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable. For oil and natural gas production facilities subject to subpart HH of this part, the potential to emit provisions in § 63.760(a) may be used. For natural gas transmission and storage facilities subject to subpart HHH of this part, the maximum annual facility gas throughput for storage facilities may be determined according to § 63.1270(a)(1) and the maximum annual throughput for transmission facilities may be determined according to § 63.1270(a)(2).

*Production field facility* means those oil and gas production facilities located prior to the point of custody transfer.

*Production well* means any hole drilled in the earth from which crude oil, condensate, or field natural gas is extracted.

*Regenerative/recuperative cycle stationary combustion turbine* means

any stationary combustion turbine that recovers heat from the stationary combustion turbine exhaust gases using an exhaust heat exchanger to preheat the combustion air entering the combustion chamber of the stationary combustion turbine.

*Research or laboratory facility* means any stationary source whose primary purpose is to conduct research and development into new processes and products, where such source is operated under the close supervision of technically trained personnel and is not engaged in the manufacture of products for commercial sale in commerce, except in a *de minimis* matter.

*Simple cycle stationary combustion turbine* means any stationary combustion turbine that does not recover heat from the stationary combustion turbine exhaust gases.

*Stationary combustion turbine* means all equipment, including but not limited to the turbine, the fuel, air, lubrication and exhaust gas systems, control systems (except emissions control equipment), and any ancillary components and sub-components comprising any simple cycle stationary combustion turbine, any regenerative/recuperative cycle stationary combustion turbine, the combustion turbine portion of any stationary cogeneration cycle combustion system, or the combustion turbine portion of

any stationary combined cycle steam/electric generating system. Stationary means that the combustion turbine is not self propelled or intended to be propelled while performing its function. Stationary combustion turbines do not include turbines located at a research or laboratory facility, if research is conducted on the turbine itself and the turbine is not being used to power other applications at the research or laboratory facility.

*Storage vessel with the potential for flash emissions* means any storage vessel that contains a hydrocarbon liquid with a stock tank gas-to-oil ratio equal to or greater than 0.31 cubic meters per liter and an American Petroleum Institute gravity equal to or greater than 40 degrees and an actual annual average hydrocarbon liquid throughput equal to or greater than 79,500 liters per day. Flash emissions occur when dissolved hydrocarbons in the fluid evolve from solution when the fluid pressure is reduced.

*Surface site* means any combination of one or more graded pad sites, gravel pad sites, foundations, platforms, or the immediate physical location upon which equipment is physically affixed.

#### Tables to Subpart YYYY of Part 63.

As stated in § 63.6100, you must comply with the following emission limitations:

TABLE 1 TO SUBPART YYYY OF PART 63.—EMISSION LIMITATIONS

For each new or reconstructed stationary combustion turbine described in § 63.6100 which is . . .	You must meet the following emission limitations . . .
1. a lean premix gas-fired stationary combustion turbine as defined in this subpart, 2. a lean premix oil-fired stationary combustion turbine as defined in this subpart, 3. a diffusion flame gas-fired stationary combustion turbine as defined in this subpart, or 4. a diffusion flame oil-fired stationary combustion turbine as defined in this subpart.	limit the concentration of formaldehyde to 91 ppbvd or less at 15 percent O <sub>2</sub> .

As stated in §§ 63.6100 and 63.6140, you must comply with the following operating limitations:

TABLE 2 TO SUBPART YYYY OF PART 63.—OPERATING LIMITATIONS

For . . .	You must . . .
1. each stationary combustion turbine that is required to comply with the emission limitation for formaldehyde and is using an oxidation catalyst.	maintain the 4-hour rolling average of the catalyst inlet temperature within the range suggested by the catalyst manufacturer.
2. each stationary combustion turbine that is required to comply with the emission limitation for formaldehyde and is not using an oxidation catalyst.	maintain any operating limitations approved by the Administrator.

As stated in § 63.6120, you must comply with the following requirements for performance tests and initial compliance demonstrations:



TABLE 3 TO SUBPART YYYY OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS AND INITIAL COMPLIANCE DEMONSTRATIONS

You must . . .	Using . . .	According to the following requirements . . .
a. demonstrate formaldehyde emissions meet the emission limitations specified in Table 1 by a performance test initially and on an annual basis AND.	Test Method 320 of 40 CFR part 63, appendix A; ASTM D6348–03 provided that %R as determined in Annex A5 of ASTM D6348–03 is equal or greater than 70% and less than or equal to 130%; or other methods approved by the Administrator.	formaldehyde concentration must be corrected to 15 percent O <sub>2</sub> , dry basis. Results of this test consist of the average of the three 1 hour runs. Test must be conducted within 10 percent of 100 percent load.
b. select the sampling port location and the number of traverse points AND.	Method 1 or 1A of 40 CFR part 60, appendix A § 63.7(d)(1)(i).	if using an air pollution control device, the sampling site must be located at the outlet of the air pollution control device.
c. determine the O <sub>2</sub> concentration at the sampling port location AND.	Method 3A or 3B of 40 CFR part 60, appendix A.	measurements to determine O <sub>2</sub> concentration must be made at the same time as the performance test.
d. determine the moisture content at the sampling port location for the purposes of correcting the formaldehyde concentration to a dry basis.	Method 4 of 40 CFR part 60, appendix A or Test Method 320 of 40 CFR part 63, appendix A, or ASTM D6348–03.	measurements to determine moisture content must be made at the same time as the performance test.

As stated in §§ 63.6110 and 63.6130, you must comply with the following requirements to demonstrate initial compliance with emission limitations:

TABLE 4 TO SUBPART YYYY OF PART 63.—INITIAL COMPLIANCE WITH EMISSION LIMITATIONS

For the . . .	You have demonstrated initial compliance if . . .
emission limitation for formaldehyde..	the average formaldehyde concentration meets the emission limitations specified in Table 1.

As stated in §§ 63.6135 and 63.6140, you must comply with the following requirements to demonstrate continuing compliance with operating limitations:

TABLE 5 OF SUBPART YYYY OF PART 63.—CONTINUOUS COMPLIANCE WITH OPERATING LIMITATIONS

For each stationary combustion turbine complying with the emission limitation for formaldehyde . . .	You must demonstrate continuous compliance by . . .
1. with an oxidation catalyst .....	continuously monitoring the inlet temperature to the catalyst and maintaining the 4-hour rolling average of the inlet temperature within the range suggested by the catalyst manufacturer.
2. without the use of an oxidation catalyst .....	continuously monitoring the operating limitations that have been approved in your petition to the Administrator.

As stated in § 63.6150, you must comply with the following requirements for reports:

TABLE 6 OF SUBPART YYYY OF PART 63.—REQUIREMENTS FOR REPORTS

If you own or operate a . . .	you must . . .	According to the following requirements . . .
1. stationary combustion turbine which must comply with the formaldehyde emission limitation.	report your compliance status .....	semiannually, according to the requirements of § 63.6150.
2. stationary combustion turbine which fires landfill gas, digester gas or gasified MSW equivalent to 10 percent or more of the gross heat input on an annual basis.	report (1) the fuel flow rate of each fuel and the heating values that were used in your calculations, and you must demonstrate that the percentage of heat input provided by landfill gas, digester gas, or gasified MSW is equivalent to 10 percent or more of the gross heat input on an annual basis, (2) the operating limits provided in your federally enforceable permit, and any deviations from these limits, and (3) any problems or errors suspected with the meters.	annually, according to the requirements in § 63.6150.

TABLE 6 OF SUBPART YYYY OF PART 63.—REQUIREMENTS FOR REPORTS—Continued

If you own or operate a . . .	you must . . .	According to the following requirements . . .
3. a lean premix gas-fired stationary combustion turbine or a diffusion flame gas-fired stationary combustion turbine as defined by this subpart, and you use any quantity of distillate oil to fire any new or existing stationary combustion turbine which is located at the same major source.	report (1) the number of hours distillate oil was fired by each new or existing stationary combustion turbine during the reporting period, (2) the operating limits provided in your federally enforceable permit, and any deviations from these limits, and (3) any problems or errors suspected with the meters.	annually, according to the requirements in § 63.6150.

You must comply with the applicable General Provisions requirements:

TABLE 7 OF SUBPART YYYY OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART YYYY

Citation	Subject	Applies to Subpart YYYY	Explanation
§ 63.1 .....	General applicability of the General Provisions.	Yes .....	Additional terms defined in § 63.6175.
§ 63.2 .....	Definitions .....	Yes .....	Additional terms defined in § 63.6175.
§ 63.3 .....	Units and abbreviations .....	Yes.	
§ 63.4 .....	Prohibited activities .....	Yes.	
§ 63.5 .....	Construction and reconstruction .....	Yes.	
§ 63.6(a) .....	Applicability .....	Yes.	
§ 63.6(b)(1)–(4) .....	Compliance dates for new and reconstructed sources.	Yes.	
§ 63.6(b)(5) .....	Notification .....	Yes.	
§ 63.6(b)(6) .....	[Reserved].		
§ 63.6(b)(7) .....	Compliance dates for new and reconstructed area sources that become major.	Yes.	
§ 63.6(c)(1)–(2) .....	Compliance dates for existing sources ..	Yes.	
§ 63.6(c)(3)–(4) .....	[Reserved].		
§ 63.6(c)(5) .....	Compliance dates for existing area sources that become major.	Yes.	
§ 63.6(d) .....	[Reserved].		
§ 63.6(e)(1) .....	Operation and maintenance .....	Yes.	
§ 63.6(e)(2) .....	[Reserved].		
§ 63.6(e)(3) .....	SSMP .....	Yes.	
§ 63.6(f)(1) .....	Applicability of standards except during startup, shutdown, or malfunction (SSM).	Yes.	
§ 63.6(f)(2) .....	Methods for determining compliance .....	Yes.	
§ 63.6(f)(3) .....	Finding of compliance .....	Yes.	
§ 63.6(g)(1)–(3) .....	Use of alternative standard .....	Yes.	
§ 63.6(h) .....	Opacity and visible emission standards	No .....	Subpart YYYY does not contain opacity or visible emission standards.
§ 63.6(i) .....	Compliance extension procedures and criteria.	Yes.	
§ 63.6(j) .....	Presidential compliance exemption .....	Yes.	
§ 63.7(a)(1)–(2) .....	Performance test dates .....	Yes .....	Subpart YYYY contains performance test dates at § 63.6110.
§ 63.7(a)(3) .....	Section 114 authority .....	Yes.	
§ 63.7(b)(1) .....	Notification of performance test .....	Yes.	
§ 63.7(b)(2) .....	Notification of rescheduling .....	Yes.	
§ 63.7(c) .....	Quality assurance/test plan .....	Yes.	
§ 63.7(d) .....	Testing facilities .....	Yes.	
§ 63.7(e)(1) .....	Conditions for conducting performance tests.	Yes.	
§ 63.7(e)(2) .....	Conduct of performance tests and reduction of data.	Yes .....	Subpart YYYY specifies test methods at § 63.6120.
§ 63.7(e)(3) .....	Test run duration .....	Yes.	
§ 63.7(e)(4) .....	Administrator may require other testing under section 114 of the CAA.	Yes.	
§ 63.7(f) .....	Alternative test method provisions .....	Yes.	
§ 63.7(g) .....	Performance test data analysis, record-keeping, and reporting.	Yes.	
§ 63.7(h) .....	Waiver of tests .....	Yes.	
§ 63.8(a)(1) .....	Applicability of monitoring requirements	Yes .....	Subpart YYYY contains specific requirements for monitoring at § 63.6125.
§ 63.8(a)(2) .....	Performance specifications .....	Yes.	
§ 63.8(a)(3) .....	[Reserved].		
§ 63.8(a)(4) .....	Monitoring for control devices .....	No.	

TABLE 7 OF SUBPART YYYY OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART YYYY—Continued

Citation	Subject	Applies to Subpart YYYY	Explanation
§ 63.8(b)(1) .....	Monitoring .....	Yes.	
§ 63.8(b)(2)–(3) .....	Multiple effluents and multiple monitoring systems.	Yes.	
§ 63.8(c)(1) .....	Monitoring system operation and maintenance.	Yes.	
§ 63.8(c)(1)(i) .....	Routine and predictable SSM .....	Yes.	
§ 63.8(c)(1)(ii) .....	Parts for repair of CMS readily available	Yes.	
§ 63.8(c)(1)(iii) .....	SSMP for CMS required .....	Yes.	
§ 63.8(c)(2)–(3) .....	Monitoring system installation .....	Yes.	
§ 63.8(c)(4) .....	Continuous monitoring system (CMS) requirements.	Yes .....	Except that subpart YYYY does not require continuous opacity monitoring systems (COMS).
§ 63.8(c)(5) .....	COMS minimum procedures .....	No.	
§ 63.8(c)(6)–(8) .....	CMS requirements .....	Yes .....	Except that subpart YYYY does not require COMS.
§ 63.8(d) .....	CMS quality control .....	Yes.	
§ 63.8(e) .....	CMS performance evaluation .....	Yes .....	Except for § 63.8(e)(5)(ii), which applies to COMS.
§ 63.8(f)(1)–(5) .....	Alternative monitoring method .....	Yes.	
§ 63.8(f)(6) .....	Alternative to relative accuracy test .....	Yes.	
§ 63.8(g) .....	Data reduction .....	Yes .....	Except that provisions for COMS are not applicable. Averaging periods for demonstrating compliance are specified at §§ 63.6135 and 63.6140.
§ 63.9(a) .....	Applicability and State delegation of notification requirements.	Yes.	
§ 63.9(b)(1)–(5) .....	Initial notifications .....	Yes .....	Except that § 63.9(b)(3) is reserved.
§ 63.9(c) .....	Request for compliance extension .....	Yes.	
§ 63.9(d) .....	Notification of special compliance requirements for new sources.	Yes.	
§ 63.9(e) .....	Notification of performance test .....	Yes.	
§ 63.9(f) .....	Notification of visible emissions/opacity test.	No .....	Subpart YYYY does not contain opacity or VE standards.
§ 63.9(g)(1) .....	Notification of performance evaluation ..	Yes.	
§ 63.9(g)(2) .....	Notification of use of COMS data .....	No .....	Subpart YYYY does not contain opacity or VE standards.
§ 63.9(g)(3) .....	Notification that criterion for alternative to relative accuracy test audit (RATA) is exceeded.	Yes .....	If alternative is in use.
§ 63.9(h) .....	Notification of compliance status .....	Yes .....	Except that notifications for sources not conducting performance tests are due 30 days after completion of performance evaluations. § 63.9(h)(4) is reserved.
§ 63.9(i) .....	Adjustment of submittal deadlines .....	Yes.	
§ 63.9(j) .....	Change in previous information .....	Yes.	
§ 63.10(a) .....	Administrative provisions for record-keeping and reporting.	Yes.	
§ 63.10(b)(1) .....	Record retention .....	Yes.	
§ 63.10(b)(2)(i)–(iii) .....	Records related to SSM .....	Yes.	
§ 63.10(b)(2)(iv)–(v) .....	Records related to actions during SSM	Yes.	
§ 63.10(b)(2)(vi)–(xi) .....	CMS records .....	Yes.	
§ 63.10(b)(2)(xii) .....	Record when under waiver .....	Yes.	
§ 63.10(b)(2)(xiii) .....	Records when using alternative to RATA.	Yes .....	For CO standard if using RATA alternative.
§ 63.10(b)(2)(xiv) .....	Records of supporting documentation ...	Yes.	
§ 63.10(b)(3) .....	Records of applicability determination ...	Yes.	
§ 63.10(c) .....	Additional records for sources using CMS.	Yes .....	Except that § 63.10(c)(2)–(4) and (9) are reserved.
§ 63.10(d)(1) .....	General reporting requirements .....	Yes.	
§ 63.10(d)(2) .....	Report of performance test results .....	Yes.	
§ 63.10(d)(3) .....	Reporting opacity or VE observations ...	No .....	Subpart YYYY does not contain opacity or VE standards.
§ 63.10(d)(4) .....	Progress reports .....	Yes.	
§ 63.10(d)(5) .....	Startup, shutdown, and malfunction reports.	No .....	Subpart YYYY does not require reporting of startup, shutdowns, or malfunctions.
§ 63.10(e)(1) and (2)(i) .....	Additional CMS reports .....	Yes.	
§ 63.10(e)(2)(ii) .....	COMS-related report .....	No .....	Subpart YYYY does not require COMS.
§ 63.10(e)(3) .....	Excess emissions and parameter exceedances reports.	Yes.	

TABLE 7 OF SUBPART YYYY OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART YYYY—Continued

Citation	Subject	Applies to Sub-part YYYY	Explanation
§ 63.10(e)(4) .....	Reporting COMS data .....	No .....	Subpart YYYY does not require COMS.
§ 63.10(f) .....	Waiver for recordkeeping and reporting	Yes.	
§ 63.11 .....	Flares .....	No.	
§ 63.12 .....	State authority and delegations .....	Yes.	
§ 63.13 .....	Addresses .....	Yes.	
§ 63.14 .....	Incorporation by reference .....	Yes.	
§ 63.15 .....	Availability of information .....	Yes.	



# Federal Register

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**Friday,  
March 5, 2004**

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## **Part III**

### **Department of Housing and Urban Development**

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**Federal Property Suitable as Facilities To  
Assist the Homeless; Notice**

# DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4901-N-10]

## Federal Property Suitable as Facilities To Assist the Homeless

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

**FOR FURTHER INFORMATION CONTACT:** Mark Johnston, room 7266, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708-1234; TTY number for the hearing- and speech-impaired (202) 708-2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1-800-927-7588.

**SUPPLEMENTARY INFORMATION:** In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless v. Veterans Administration*, No. 88-2503-OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where

property is described as for "off-site use only" recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Shirley Kramer, Division of Property Management, Program Support Center, HHS, room 5B-41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443-2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1-800-927-7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: COAST GUARD: Commandant, United States Coast Guard, ATTN: Teresa Sheinberg, 2100 Second St., SW., Rm 6109, Washington, DC 20314-1000; (202) 267-6142; GSA: Mr. Brian K. Polly, Assistant

Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW., Washington, DC 20405; (202) 501-0052; INTERIOR: Ms. Linda Tribby, Acquisition & Property Management, Department of the Interior, 1849 C Street, NW., MS5512, Washington, DC 20240; (202) 219-0728; NAVY: Mr. Charles C. Cocks, Director, Department of the Navy, Real Estate Policy Division, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE., Suite 1000, Washington, DC 20374-5065; (202) 685-9200; (These are not toll-free numbers).

Dated: February 26, 2004.

**John D. Garrity,**  
*Director, Office of Special Needs Assistance Programs.*

## Title V, Federal Surplus Property Program Federal Register Report for 3/5/04

### Suitable/Available Properties

#### Buildings (by State)

##### California

SSA Building  
1230 12th Street  
Modesto Co: CA 95354-  
Landholding Agency: GSA  
Property Number: 54200330003  
Status: Surplus  
Comment: 11,957 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—office  
GSA Number: 9-G-CA-1610

##### Colorado

Strategic Range Tng Complex  
Industrial Park  
LaJunta Co: Otero CO 81050-9501  
Landholding Agency: GSA  
Property Number: 54200330013  
Status: Surplus  
Comment: main bldg. with 6 storage bldgs.  
GSA Number: 7-D-CO-0648

##### Florida

Lexington Terrace Housing  
Old Corry Field Road  
Pensacola Co: Escambia FL 32508-  
Landholding Agency: GSA  
Property Number: 54200410014  
Status: Surplus  
Comment: 44 duplexes, units 400 to 800 sq. ft., small ofc. bldg., laundromat, presence of asbestos/lead paint, potential electric power  
GSA Number: 4-N-FL-07352A

##### Hawaii

Bldg. 442, Naval Station  
Ford Island  
Pearl Harbor Co: Honolulu HI 96860-  
Landholding Agency: Navy  
Property Number: 77199630088  
Status: Excess  
Comment: 192 sq. ft., most recent use—storage, off-site use only  
Bldg. S180  
Naval Station, Ford Island  
Pearl Harbor Co: Honolulu HI 96860-  
Landholding Agency: Navy

Property Number: 77199640039  
Status: Unutilized  
Comment: 3412 sq. ft., 2-story, most recent use—bomb shelter, off-site use only, relocation may not be feasible

Bldg. S181  
Naval Station, Ford Island  
Pearl Harbor Co: Honolulu HI 96860—  
Landholding Agency: Navy  
Property Number: 77199640040  
Status: Unutilized  
Comment: 4258 sq. ft., 1-story, most recent use—bomb shelter, off-site use only, relocation may not be feasible

Bldg. 219  
Naval Station, Ford Island  
Pearl Harbor Co: Honolulu HI 96860—  
Landholding Agency: Navy  
Property Number: 77199640041  
Status: Unutilized  
Comment: 620 sq. ft., most recent use—damage control, off-site use only, relocation may not be feasible

Bldg. 220  
Naval Station, Ford Island  
Pearl Harbor Co: Honolulu HI 96860—  
Landholding Agency: Navy  
Property Number: 77199640042  
Status: Unutilized  
Comment: 620 sq. ft., most recent use—damage control, off-site use only, relocation may not be feasible

Illinois  
Soc. Sec. Admin. Ofc.  
525 18th Street  
Rock Island Co: IL  
Landholding Agency: GSA  
Property Number: 54200310017  
Status: Surplus  
Comment: 5800 sq. ft., most recent use—office  
GSA Number: 1-G-IL-730

Indiana  
Soc. Sec. Admin. Ofc.  
327 West Marion  
Elkhart Co: IN  
Landholding Agency: GSA  
Property Number: 54200310016  
Status: Surplus  
Comment: 6600 sq. ft., most recent use—office  
GSA Number: 1-G-IN-596

Paulsen U.S. Army Reserve Ctr  
800 East Crystal  
N. Judson Co: Starke IN 46366—  
Landholding Agency: GSA  
Property Number: 54200330001  
Status: Surplus  
Comment: 13,114 sq. ft., presence of asbestos/lead paint, most recent use—office/training/vehicle maint. and repair  
GSA Number: 1-D-IN-597

Iowa  
Fed Bldg/Courthouse  
350 W 6th Street  
Dubuque Co: IA 52001—  
Landholding Agency: GSA  
Property Number: 54200330014  
Status: Excess  
Comment: 45,729 sq. ft., needs repair, portion occupied, most recent use—office, historic covenants  
GSA Number: 7-G-IA-0495-1

23 Buildings  
Former Naval Housing  
Waverly Co: Bremer IA 50677—  
Landholding Agency: GSA  
Property Number: 54200340006  
Status: Surplus  
Comment: 2 to 3 bedroom homes, 864 to 1760 sq. ft., presence of asbestos/lead paint  
GSA Number: 7-I-IA-0463-5

Louisiana  
SSA Baton Rouge Dist. Ofc.  
350 Donmoor Avenue  
Baton Rouge Co: LA 70806—  
Landholding Agency: GSA  
Property Number: 54200330005  
Status: Surplus  
Comment: 9456 sq. ft., most recent use—office  
GSA Number: 7-G-LA-0567

Maryland  
Lee Court Apartments  
Nuttall Drive  
Edgewood Co: Harford MD 21040—  
Landholding Agency: GSA  
Property Number: 54200410008  
Status: Excess  
Comment: 25 bldgs w/71 apartment units, needs rehab, presence of asbestos/lead paint, water and sewer systems require improvements  
GSA Number: 4-D-MD-0616

Michigan  
Detroit Job Corp Center  
10401 E. Jefferson  
1265 St. Clair  
Detroit Co: Wayne MI  
Landholding Agency: GSA  
Property Number: 54200230012  
Status: Surplus  
Comment: Parcel One = 80,590 sq. ft. bldg., needs repair, presence of asbestos; Parcel Two = 5140 sq. ft. bldg.  
GSA Number: 2-L-MI-757

Nevada  
Young Fed Bldg/Courthouse  
300 Booth Street  
Reno Co: NV 89502—  
Landholding Agency: GSA  
Property Number: 54200330006  
Status: Surplus  
Comment: 133,439 sq. ft. (85,637 sq. ft. available), presence of asbestos/lead paint  
GSA Number: 9-G-NV-529

Texas  
Border Patrol Station  
Hwy 285  
Falfurrias Co: Brooks TX 78355-3526  
Landholding Agency: GSA  
Property Number: 54200410013  
Status: Surplus  
Comment: 2426 sq. ft., possible asbestos/lead paint, subject to existing easements  
GSA Number: 7-J-TX-0620A

Washington  
Bldg. 88  
1917 Marsh Road  
Yakima Co: WA 98901—  
Landholding Agency: Interior  
Property Number: 61200340007  
Status: Unutilized  
Comment: 1032 sq. ft., presence of asbestos/lead paint, most recent use—office, off-site use only

## Land (by State)

Arizona  
Florence Gardens Subd.  
60 miles SE of Phoenix  
Pinal Co: AZ 85232—  
Landholding Agency: GSA  
Property Number: 54200410007  
Status: Surplus  
Comment: 58 vacant parcels totaling 8.12 acres, controlled by covenants/restrictions  
GSA Number: 9-I-AZ-0829

Michigan  
IOM Site  
Chesterfield Road  
Chesterfield Co: Macomb MI —  
Landholding Agency: GSA  
Property Number: 54200340008  
Status: Excess  
Comment: approx. 17.4 acres w/concrete block bldg. in poor condition, most recent use—radio antenna field, narrow right-of-way  
GSA Number: 1-D-MI-0603F

New Mexico  
H Marker Facility  
Roswell Co: Chaves NM 88201—  
Landholding Agency: GSA  
Property Number: 54200330011  
Status: Surplus  
Comment: 12.398 acres, subject to existing easements  
GSA Number: 7-U-NM-0587

Utah  
0.5 acres  
2968 W. Alice Way  
West Valley Co: Salt Lake UT 84119—  
Landholding Agency: GSA  
Property Number: 54200340004  
Status: Excess  
Comment: paved  
GSA Number: 7-U-UT-0515

Washington  
15.1 acres  
Road I8NE & Road 36NE  
Coulee City Co: Grant WA 99115—  
Landholding Agency: Interior  
Property Number: 61200310002  
Status: Excess  
Comment: subject to existing easements/substation site

## Suitable/Unavailable Properties

### Buildings (by State)

California  
Merced Federal Bldg.  
415 W. 18th St.  
Merced Co: CA 95340—  
Landholding Agency: GSA  
Property Number: 54200220012  
Status: Surplus  
Comment: 15,492 sq. ft., presence of asbestos/lead paint, Historic Preservation Covenant will be included in deed, relocation issue  
GSA Number: 9-G-CA-1567  
Fed. Bldg./Post Office  
1125 I Street  
Modesto Co: CA 95354—  
Landholding Agency: GSA  
Property Number: 54200310010  
Status: Excess  
Comment: 23,770 sq. ft., presence of asbestos/lead paint, controlled access,



Federal tenants occupy portion of bldg.,  
National Register of Historic Places  
GSA Number: 9-G-CA-1576  
Bell Federal Service Center 5600  
Rickenbacker Road  
Bell Co: Los Angeles CA 90201-  
Landholding Agency: GSA  
Property Number: 54200320009  
Status: Excess  
Comment:  
Correction/Republished: 7 bldgs., various sq.  
ft., need repair, portion occupied,  
restricted access, presence of asbestos/lead  
paint/PCBs, most recent use—warehouse/  
office  
GSA Number: 9-G-CA-06984  
Calxico Border Patrol Station  
813 Andrade Ave.  
Calxico Co: CA 92231-  
Landholding Agency: GSA  
Property Number: 54200320012  
Status: Excess  
Comment: 5600 sq. ft. main bldg., and 6845  
sq. ft. parking/garage structure, need  
repairs  
GSA Number: 9-J-CA-1539  
Illinois  
LaSalle Comm. Tower Site  
1600 NE 8th St.  
Richland Co: LaSalle IL 61370-  
Landholding Agency: GSA  
Property Number: 54200020019  
Status: Excess  
Comment: 120 sq. ft. cinder block bldg. and  
a 300' tower  
GSA Number: 1-D-IL-724  
Indiana  
Federal Building  
610 Connecticut Street  
Gary Co: IN 46402-  
Landholding Agency: GSA  
Property Number: 54200310011  
Status: Excess  
Comment: 30,478 sq. ft., needs repair,  
presence of asbestos, most recent use—  
office  
GSA Number: 1-G-IN-591  
Maryland  
29 Bldgs.  
Walter Reed Army Medical Center  
Forest Glen Annex, Linden Lane  
Silver Spring Co: Montgomery MD 20910-  
1246  
Location: 24 bldgs. are in poor condition,  
presence of asbestos/lead paint, most  
recent use—hospital annex, lab, office  
Landholding Agency: GSA  
Property Number: 54200130012  
Status: Excess  
Comment: Historic Preservation Covenants  
will impact reuse, property will not be  
parcelized for disposal, high cost  
associated w/maintenance, estimated cost  
to renovate \$17 million  
GSA Number: 11-D-MD-558-B  
Minnesota  
GAP Filler Radar Site  
St. Paul Co: Rice MN 55101-  
Landholding Agency: GSA  
Property Number: 54199910009  
Status: Excess  
Comment: 1266 sq. ft., concrete block,  
presence of asbestos/lead paint, most

recent use—storage, zoning requirements,  
preparations for a Phase I study underway,  
possible underground storage tank  
GSA Number: 1-GR(1)-MN-475  
MG Clement Trott Mem. USARC  
Walker Co: Cass MN 56484-  
Landholding Agency: GSA  
Property Number: 54199930003  
Status: Excess  
Comment: 4320 sq. ft. training center and  
1316 sq. ft. vehicle maintenance shop,  
presence of environmental conditions  
GSA Number: 1-D-MN-575  
Mississippi  
Federal Building  
500 West Main Street  
Tupelo Co: Lee MS 38801-  
Landholding Agency: GSA  
Property Number: 54200340002  
Status: Surplus  
Comment: 28,867 sq. ft., presence of  
asbestos/possible lead paint  
GSA Number: 4-G-MS-0561  
Missouri  
Hardesty Federal Complex  
607 Hardesty Avenue  
Kansas City Co: Jackson MO 64124-3032  
Landholding Agency: GSA  
Property Number: 54199940001  
Status: Excess  
Comment: 7 warehouses and support  
buildings (540 to 216,000 sq. ft.) on 17.47  
acres, major rehab, most recent use—  
storage/office, utilities easement  
GSA Number: 7-G-MO-637  
New York  
Social Sec. Admin. Bldg.  
517 N. Barry St.  
Olean Co: NY 10278-0004  
Landholding Agency: GSA  
Property Number: 54200230009  
Status: Excess  
Comment: 9174 sq. ft., poor condition, most  
recent use—office  
GSA Number: 1-G-NY-0895  
Army Reserve Center  
205 Oak Street  
Batavia Co: NY 14020-  
Landholding Agency: GSA  
Property Number: 54200240004  
Status: Excess  
Comment: 9695 sq. ft., presence of asbestos/  
lead paint, most recent use—admin/  
storage, proximity of wetlands  
GSA Number: 1-D-NY-890  
Hancock Army Complex  
Track 4  
Stewart Drive West  
Cicero Co: Onondaga NY 13039-  
Landholding Agency: GSA  
Property Number: 54200310013  
Status: Excess  
Comment: 3 bunker-style structures and  
several small outbuildings, presence of  
asbestos, possible lead paint, most recent  
use—admin/training/storage  
GSA Number: 1-D-NY-803  
North Carolina  
Tarheel Army Missile Plant  
Burlington Co: Alamance NC 27215-  
Landholding Agency: GSA  
Property Number: 54199820002  
Status: Excess

Comment: 31 bldgs., presence of asbestos,  
most recent use—admin., warehouse,  
production space and 10.04 acres parking  
area, contamination at site—environmental  
clean up in process  
GSA Number: 4-D-NC-593  
Vehicle Maint. Facility 310  
New Bern Ave.  
Raleigh Co: Wake NC 27601-  
Landholding Agency: GSA  
Property Number: 54200020012  
Status: Excess  
Comment: 10,455 sq. ft., most recent use—  
maintenance garage  
GSA Number: NC076AB  
Tennessee  
3 Facilities, Guard Posts  
Volunteer Army Ammunition Plant  
Chattanooga Co: Hamilton TN 37421-  
Landholding Agency: GSA  
Property Number: 54199930011  
Status: Surplus  
Comment: 48-64 sq. ft., most recent use—  
access control, property was published in  
error as available on 2/11/00  
GSA Number: 4-D-TN-594F  
4 Bldgs.  
Volunteer Army Ammunition Plant  
Railroad System Facilities  
Chattanooga Co: Hamilton TN 37421-  
Landholding Agency: GSA  
Property Number: 54199930012  
Status: Surplus  
Comment: 144-2,420 sq. ft., most recent  
use—storage/rail weighing facilities/dock,  
potential use restrictions, property was  
published in error as available on 2/11/00  
GSA Number: 4-D-TN-594F  
200 bunkers  
Volunteer Army Ammunition Plant  
Storage Magazines  
Chattanooga Co: Hamilton TN 37421-  
Landholding Agency: GSA  
Property Number: 54199930014  
Status: Surplus  
Comment: approx. 200 concrete bunkers  
covering a land area of approx. 4000 acres,  
most recent use—storage/buffer area,  
potential use restrictions, property was  
published in error as available on 2/11/00  
GSA Number: 4-D-TN-594F  
Bldg. 232  
Volunteer Army Ammunition Plant  
Chattanooga Co: Hamilton TN 37421-  
Landholding Agency: GSA  
Property Number: 54199930020  
Status: Surplus  
Comment: 10,000 sq. ft., most recent use—  
office, presence of asbestos, approx. 5 acres  
associated w/bldg., potential use  
restrictions, property was published in  
error as available on 2/11/00  
GSA Number: 4-D-TN-594F  
2 Laboratories  
Volunteer Army Ammunition Plant  
Chattanooga Co: Hamilton TN 37421-  
Landholding Agency: GSA  
Property Number: 54199930021  
Status: Surplus  
Comment: 2000-12,000 sq. ft., potential use/  
lease restrictions, property was published  
in error as available on 2/11/00  
GSA Number: 4-D-TN-594F  
3 Facilities

Volunteer Army Ammunition Plant  
Water Distribution Facilities  
Chattanooga Co: Hamilton TN 37421–  
Landholding Agency: GSA  
Property Number: 54199930022  
Status: Surplus  
Comment: 256–15,204 sq. ft., 35.86 acres  
associated w/bldgs., most recent use—  
water distribution system, potential use/  
lease restrictions, property was published  
in error as available on 2/11/00

GSA Number: 4–D–TN–594F

Virginia

SSA Trust Fund Bldg.

2301 Park Ave.

Lynchburg Co: VA 24501–

Landholding Agency: GSA

Property Number: 54200340010

Status: Excess

Comment: 3400 sq. ft., most recent use—  
office

GSA Number: 4–G–VA–0734

#### Land (by State)

Alaska

37.109 acres

U.S. Coast Guard

Gibson Cove Co: Kodiak AK

Landholding Agency: GSA

Property Number: 54200320001

Status: Surplus

Comment: easements for highway, electrical  
and communication lines, historical  
landmark

GSA Number: 9–U–AK–783

Florida

Communications Annex Site

S. Allapattah Road

Homestead Co: Miami-Dade FL

Landholding Agency: GSA

Property Number: 54200310008

Status: Excess

Comment: approx. 20 acres w/deteriorated  
building, no public water, within 100–year  
floodplain, approx. 17 acres identified as  
wetlands, subject to all applicable laws/  
regulations

GSA Number: 4–D–FL–1078–4A

Georgia

Land w/highway interchange

Fort Benning

I–185 and Hwy 27/280

Columbus Co: Muscogee GA 31905–

Landholding Agency: GSA

Property Number: 54200320002

Status: Excess

Comment: 113 acres—98 acres of this land  
encumbered by highway interchange

GSA Number: 4–D–GA–0872

Hawaii

Parcels 9, 2, 4

Loran Station Upolu Point

Hawi Co: Hawaii HI

Location:

Resubmitted to Federal Register for  
publication

Landholding Agency: GSA

Property Number: 54200220002

Status: Surplus

Comment: parcel 9 = 6.242 acres/encumbered  
by utility and road access easements,  
parcel 2 = 1.007 acres; parcel 4 = 5.239  
acres

GSA Number: 9–U–HI–0572

New Jersey

Belle Mead Depot

Rt. 206/Mountain View Rd.

Hillsborough Co: Somerset NJ 08502–

Landholding Agency: GSA

Property Number: 54200210014

Status: Excess

Comment: approx. 400 acres, property will  
not be subdivided, contaminants of  
concern present, lease restriction on 7  
acres, 44 miles of railroad track,  
remediation activity, potential restriction  
of property f

GSA Number: 1–G–NJ–0642

Tennessee

1500 acres

Volunteer Army Ammunition Plant

Chattanooga Co: Hamilton TN 37421–

Landholding Agency: GSA

Property Number: 54199930015

Status: Surplus

Comment: scattered throughout facility, most  
recent use—buffer area, steep topography,  
potential use restrictions, property was  
published in error as available on 2/11/00

GSA Number: 4–D–TN–594F

#### Unsuitable Properties

##### *Buildings (by State)*

Alaska

Warehouse

Naval Arctic Research Lab

Cape Sabine Co: AK

Landholding Agency: Navy

Property Number: 77200320001

Status: Excess

Reason: Extensive deterioration

Operations Bldg.

Naval Arctic Research Lab

Cape Sabine Co: AK –

Landholding Agency: Navy

Property Number: 77200320002

Status: Excess

Reason: Extensive deterioration

Warehouse

Naval Arctic Research Lab

Point McIntyre Co: AK

Landholding Agency: Navy

Property Number: 77200320019

Status: Excess

Reason: Extensive deterioration

Garage

Naval Arctic Research Lab

Point McIntyre Co: AK –

Landholding Agency: Navy

Property Number: 77200320020

Status: Excess

Reason: Extensive deterioration

Operations Bldg.

Naval Arctic Research Lab

Point McIntyre Co: AK –

Landholding Agency: Navy

Property Number: 77200320021

Status: Excess

Reason: Extensive deterioration

Arizona

Motor Pool Facility

Tucson Co: AZ 95745–

Landholding Agency: GSA

Property Number: 54200410006

Status: Excess

Reason: contamination

GSA Number: 9–G–AZ–486

California

Bldg. 436

Yosemite National Park

Yosemite Co: Mariposa CA 95389–

Landholding Agency: Interior

Property Number: 61200330022

Status: Unutilized

Reason: Extensive deterioration

Mobile Home/T00706

Yosemite Natl Park 5001 Trailer Court

El Portal Co: Mariposa CA 95318–

Landholding Agency: Interior

Property Number: 61200340009

Status: Unutilized

Reason: Extensive deterioration

133/215 Conlon

Golden Gate Natl Rec Area

Mill Valley Co: Marin CA 94941–

Landholding Agency: Interior

Property Number: 61200340011

Status: Unutilized

Reason: Extensive deterioration

Bldg. 5B7

Marine Corps Recruit Depot

San Diego Co: CA 92140–

Landholding Agency: Navy

Property Number: 77199930089

Status: Unutilized

Reason: Extensive deterioration

Bldg. 23025

Marine Corps Air Station

Miramar Co: CA 92132–

Landholding Agency: Navy

Property Number: 77200330001

Status: Unutilized

Reason: Secured Area

Bldg. 23027

Marine Corps Air Station

Miramar Co: CA 92132–

Landholding Agency: Navy

Property Number: 77200330002

Status: Unutilized

Reason: Secured Area

Bldg. 33023

Naval Air Weapons Station

China Lake Co: CA 93555–6001

Landholding Agency: Navy

Property Number: 77200120115

Status: Excess

Reason: Extensive deterioration

Bldg. 6

Navy Marine Corps Rsv Ctr

Sacramento Co: CA 95828–

Landholding Agency: Navy

Property Number: 77200210017

Status: Unutilized

Reason: Secured Area

Bldg. 799

Naval Air Station

North Island Co: CA

Landholding Agency: Navy

Property Number: 77200210064

Status: Excess

Reason: Extensive deterioration

Bldg. 799

Naval Air Station

North Island Co: CA

Landholding Agency: Navy

Property Number: 77200210124

Status: Excess

Reason: Extensive deterioration

Bldg. 41308

Marine Corps Base  
Camp Pendleton Co: CA 92055–  
Landholding Agency: Navy  
Property Number: 77200220031  
Status: Excess  
Reason: Extensive deterioration  
Bldgs. 154, 157  
Navy Region South West  
San Diego Co: CA  
Landholding Agency: Navy  
Property Number: 77200220072  
Status: Excess  
Reason: Extensive deterioration  
Bldg. P–1019  
Marine Corps Base  
Camp Pendleton Co: CA 92055–  
Landholding Agency: Navy  
Property Number: 77200220073  
Status: Excess  
Reason: Extensive deterioration  
Bldg. P–4039  
Marine Corps Base  
Camp Pendleton Co: CA 92055–  
Landholding Agency: Navy  
Property Number: 77200220074  
Status: Excess  
Reason: Extensive deterioration  
Bldg. P–5011  
Marine Corps Base  
Camp Pendleton Co: CA 92055–  
Landholding Agency: Navy  
Property Number: 77200220075  
Status: Excess  
Reason: Extensive deterioration  
Bldg. P7058  
Marine Corps Base  
Camp Pendleton Co: CA 92055–  
Landholding Agency: Navy  
Property Number: 77200220076  
Status: Excess  
Reason: Extensive deterioration  
Bldgs. 18412, 18413, 18414  
Marine Warfare Training Ctr  
Camp Pendleton Co: CA 92055–  
Landholding Agency: Navy  
Property Number: 77200230040  
Status: Excess  
Reason: Extensive deterioration  
Bldg. 394  
Space & Naval Warfare Systems Center  
San Diego Co: CA  
Landholding Agency: Navy  
Property Number: 77200240041  
Status: Unutilized  
Reason: Extensive deterioration  
Bldg. 428  
Space & Naval Warfare Systems Center  
San Diego Co: CA  
Landholding Agency: Navy  
Property Number: 77200240042  
Status: Unutilized  
Reason: Extensive deterioration  
Bldg. 513  
Naval Postgraduate School  
Monterey Co: CA 93943–  
Landholding Agency: Navy  
Property Number: 77200310004  
Status: Excess  
Reason: Extensive deterioration  
Bldg. 1232  
Marine Corps Base  
Camp Pendleton Co: CA 92055–  
Landholding Agency: Navy  
Property Number: 77200310036

Status: Excess  
Reason: Extensive deterioration  
Bldg. 2297  
Marine Corps Base  
Camp Pendleton Co: CA 92055–  
Landholding Agency: Navy  
Property Number: 77200310037  
Status: Excess  
Reason: Extensive deterioration  
Bldg. 25037  
Marine Corps Base  
Camp Pendleton Co: CA 92055–  
Landholding Agency: Navy  
Property Number: 77200310038  
Status: Excess  
Reason: Extensive deterioration  
Bldg. 25168  
Marine Corps Base  
Camp Pendleton Co: CA 92055–  
Landholding Agency: Navy  
Property Number: 77200310039  
Status: Excess  
Reason: Extensive deterioration  
Bldg. 31339  
Marine Corps Base  
Camp Pendleton Co: CA 92055–  
Landholding Agency: Navy  
Property Number: 77200310040  
Status: Excess  
Reason: Extensive deterioration  
Bldg. 31350  
Marine Corps Base  
Camp Pendleton Co: CA 92055–  
Landholding Agency: Navy  
Property Number: 77200310041  
Status: Excess  
Reason: Extensive deterioration  
Bldg. 31628  
Marine Corps Base  
Camp Pendleton Co: CA 92055–  
Landholding Agency: Navy  
Property Number: 77200310042  
Status: Excess  
Reason: Extensive deterioration  
Bldg. 31629  
Marine Corps Base  
Camp Pendleton Co: CA 92055–  
Landholding Agency: Navy  
Property Number: 77200310043  
Status: Excess  
Reason: Extensive deterioration  
Bldg. 31753  
Marine Corps Base  
Camp Pendleton Co: CA 92055–  
Landholding Agency: Navy  
Property Number: 77200310044  
Status: Excess  
Reason: Extensive deterioration  
Bldg. 31754  
Marine Corps Base  
Camp Pendleton Co: CA 92055–  
Landholding Agency: Navy  
Property Number: 77200310045  
Status: Excess  
Reason: Extensive deterioration  
Bldg. 31764  
Marine Corps Base  
Camp Pendleton Co: CA 92055–  
Landholding Agency: Navy  
Property Number: 77200310046  
Status: Unutilized  
Reason: Extensive deterioration  
Bldg. 52540  
Marine Corps Base

Camp Pendleton Co: CA 92055–  
Landholding Agency: Navy  
Property Number: 77200310047  
Status: Excess  
Reason: Extensive deterioration  
Bldg. 220178  
Marine Corps Base  
Camp Pendleton Co: CA 92055–  
Landholding Agency: Navy  
Property Number: 77200310048  
Status: Excess  
Reason: Extensive deterioration  
Bldg. 232  
Naval Air Facility  
El Centro Co: CA 92243–  
Landholding Agency: Navy  
Property Number: 77200310055  
Status: Unutilized  
Reason: Extensive deterioration  
Bldg. 2203  
Marine Corps Base  
Camp Pendleton Co: CA  
Landholding Agency: Navy  
Property Number: 77200320022  
Status: Excess  
Reason: Extensive deterioration  
Bldg. 2683  
Marine Corps Base  
Camp Pendleton Co: CA 92055–  
Landholding Agency: Navy  
Property Number: 77200320023  
Status: Excess  
Reason: Extensive deterioration  
Bldg. 2685  
Marine Corps Base  
Camp Pendleton Co: CA 92055–  
Landholding Agency: Navy  
Property Number: 77200320024  
Status: Excess  
Reason: Extensive deterioration  
Bldg. 2692  
Marine Corps Base  
Camp Pendleton Co: CA 92055–  
Landholding Agency: Navy  
Property Number: 77200320025  
Status: Excess  
Reason: Extensive deterioration  
Bldg. 20735  
Marine Corps Base  
Camp Pendleton Co: CA 92055–  
Landholding Agency: Navy  
Property Number: 77200320026  
Status: Excess  
Reason: Extensive deterioration  
Bldg. 21546  
Marine Corps Base  
Camp Pendleton Co: CA 92055–  
Landholding Agency: Navy  
Property Number: 77200320027  
Status: Excess  
Reason: Extensive deterioration  
Bldg. 26034  
Marine Corps Base  
Camp Pendleton Co: CA 92055–  
Landholding Agency: Navy  
Property Number: 77200320028  
Status: Excess  
Reason: Extensive deterioration  
Bldg. 141MG  
Naval Recreation Center  
Naval Base  
San Diego Co: CA  
Landholding Agency: Navy  
Property Number: 77200320054

Status: Excess  
Reason: Extensive deterioration  
Bldg. 56  
Naval Air Station  
Lemoore Co: CA  
Landholding Agency: Navy  
Property Number: 77200330001  
Status: Excess  
Reasons: Secured Area, Extensive deterioration  
Structure 63  
Naval Air Station  
Lemoore Co: CA  
Landholding Agency: Navy  
Property Number: 77200330002  
Status: Excess  
Reason: Secured Area  
Structure 64  
Naval Air Station  
Lemoore Co: CA  
Landholding Agency: Navy  
Property Number: 77200330003  
Status: Excess  
Reason: Secured Area  
Structure 65  
Naval Air Station  
Lemoore Co: CA  
Landholding Agency: Navy  
Property Number: 77200330004  
Status: Excess  
Reason: Secured Area  
Bldg. 70  
Naval Air Station  
Lemoore Co: CA  
Landholding Agency: Navy  
Property Number: 77200330005  
Status: Excess  
Reasons: Secured Area  
Extensive deterioration  
Bldg. 75  
Naval Air Station  
Lemoore Co: CA  
Landholding Agency: Navy  
Property Number: 77200330006  
Status: Excess  
Reasons: Secured Area, Extensive deterioration  
Bldg. 776  
Naval Air Station  
Lemoore Co: CA  
Landholding Agency: Navy  
Property Number: 77200330007  
Status: Excess  
Reasons: Secured Area, Extensive deterioration  
Bldg. 818  
Naval Air Station  
Lemoore Co: CA  
Landholding Agency: Navy  
Property Number: 77200330008  
Status: Excess  
Reasons: Secured Area, Extensive deterioration  
Bldg. 827  
Naval Air Station  
Lemoore Co: CA  
Landholding Agency: Navy  
Property Number: 77200330009  
Status: Excess  
Reasons: Secured Area, Extensive deterioration  
Bldg. 931  
Naval Air Station  
Lemoore Co: CA

Landholding Agency: Navy  
Property Number: 77200330010  
Status: Excess  
Reasons: Secured Area, Extensive deterioration  
Bldg. 935  
Naval Air Station  
Lemoore Co: CA  
Landholding Agency: Navy  
Property Number: 77200330011  
Status: Excess  
Reasons: Secured Area, Extensive deterioration  
Bldg. 742  
Naval Air Station  
Lemoore Co: CA  
Landholding Agency: Navy  
Property Number: 77200330015  
Status: Excess  
Reason: Secured Area  
Bldg. 743  
Naval Air Station  
Lemoore Co: CA  
Landholding Agency: Navy  
Property Number: 77200330016  
Status: Excess  
Reasons: Secured Area, Extensive deterioration  
Bldg. 744  
Naval Air Station  
Lemoore Co: CA  
Landholding Agency: Navy  
Property Number: 77200330017  
Status: Excess  
Reason: Secured Area  
Bldg. 745  
Naval Air Station  
Lemoore Co: CA  
Landholding Agency: Navy  
Property Number: 77200330018  
Status: Excess  
Reasons: Secured Area, Extensive deterioration  
Bldg. 746  
Naval Air Station  
Lemoore Co: CA  
Landholding Agency: Navy  
Property Number: 77200330019  
Status: Excess  
Reason: Secured Area  
Bldg. 751  
Naval Air Station  
Lemoore Co: CA  
Landholding Agency: Navy  
Property Number: 77200330020  
Status: Excess  
Reason: Secured Area  
Bldg. 754  
Naval Air Station  
Lemoore Co: CA  
Landholding Agency: Navy  
Property Number: 77200330021  
Status: Excess  
Reasons: Secured Area, Extensive deterioration  
Bldg. 483  
Naval Air Station  
North Island  
San Diego Co: CA 92135-7040  
Landholding Agency: Navy  
Property Number: 77200330022  
Status: Excess  
Reason: Extensive deterioration  
Bldg. 490

Naval Air Station  
North Island  
San Diego Co: CA 92135-7040  
Landholding Agency: Navy  
Property Number: 77200330023  
Status: Excess  
Reason: Extensive deterioration  
Bldg. 606  
Naval Air Station  
North Island  
San Diego Co: CA  
Landholding Agency: Navy  
Property Number: 77200330024  
Status: Excess  
Reasons: Secured Area, Extensive deterioration  
Bldg. 620  
Naval Air Station  
North Island  
San Diego Co: CA 92135-7040  
Landholding Agency: Navy  
Property Number: 77200330025  
Status: Excess  
Reasons: Secured Area, Extensive deterioration  
Bldg. 697  
Naval Air Station  
North Island  
San Diego Co: CA 92135-7040  
Landholding Agency: Navy  
Property Number: 77200330026  
Status: Excess  
Reasons: Secured Area, Extensive deterioration  
Bldg. 76  
Space & Naval Warfare  
San Diego Co: CA  
Landholding Agency: Navy  
Property Number: 77200330027  
Status: Excess  
Reason: Extensive deterioration  
Bldgs. 15 & 16  
Fleet ASW Training Center  
San Diego Co: CA  
Landholding Agency: Navy  
Property Number: 77200330028  
Status: Excess  
Reason: Extensive deterioration  
Bldgs. 20 & 21  
Fleet ASW Training Center  
San Diego Co: CA  
Landholding Agency: Navy  
Property Number: 77200330029  
Status: Excess  
Reason: Extensive deterioration  
Bldg. 23  
Fleet ASW Training Center  
San Diego Co: CA  
Landholding Agency: Navy  
Property Number: 77200330030  
Status: Excess  
Reason: Extensive deterioration  
Bldg. 28  
Fleet ASW Training Center  
San Diego Co: CA  
Landholding Agency: Navy  
Property Number: 77200330031  
Status: Excess  
Reason: Extensive deterioration  
Bldg. 32  
Fleet ASW Training Center  
San Diego Co: CA  
Landholding Agency: Navy  
Property Number: 77200330032

Status: Excess  
Reason: Extensive deterioration  
Bldgs. 37 & 39  
Fleet ASW Training Center  
San Diego Co: CA  
Landholding Agency: Navy  
Property Number: 77200330033  
Status: Excess  
Reason: Extensive deterioration  
Bldg. 63  
Fleet ASW Training Center  
San Diego Co: CA  
Landholding Agency: Navy  
Property Number: 77200330034  
Status: Excess  
Reason: Extensive deterioration  
Bldg. 69  
Fleet ASW Training Center  
San Diego Co: CA  
Landholding Agency: Navy  
Property Number: 77200330035  
Status: Excess  
Reason: Extensive deterioration  
Bldg. 2043  
Fleet ASW Training Center  
San Diego Co: CA  
Landholding Agency: Navy  
Property Number: 77200330036  
Status: Excess  
Reason: Extensive deterioration  
Bldg. 116  
Naval Submarine Base  
San Diego Co: CA  
Landholding Agency: Navy  
Property Number: 77200330037  
Status: Excess  
Reason: Extensive deterioration  
Bldg. 508  
Naval Submarine Base  
San Diego Co: CA  
Landholding Agency: Navy  
Property Number: 77200330038  
Status: Excess  
Reason: Extensive deterioration  
Bldg. 19  
Naval Submarine Base  
San Diego Co: CA  
Landholding Agency: Navy  
Property Number: 77200330039  
Status: Excess  
Reason: Extensive deterioration  
Bldgs. 62341 & 62342  
Marine Corps Base  
Camp Pendleton Co: CA 92055–  
Landholding Agency: Navy  
Property Number: 77200330040  
Status: Excess  
Reason: Extensive deterioration  
Bldg. 1361  
Marine Corps Base  
Camp Pendleton Co: CA 92055–  
Landholding Agency: Navy  
Property Number: 77200340001  
Status: Excess  
Reason: Extensive deterioration  
Bldg. 22135  
Marine Corps Base  
Camp Pendleton Co: CA 92055–  
Landholding Agency: Navy  
Property Number: 77200340002  
Status: Excess  
Reason: Extensive deterioration  
Bldg. 22136  
Marine Corps Base

Camp Pendleton Co: CA 92055–  
Landholding Agency: Navy  
Property Number: 77200340003  
Status: Excess  
Reason: Extensive deterioration  
Bldg. 22144  
Marine Corps Base  
Camp Pendleton Co: CA 92055–  
Landholding Agency: Navy  
Property Number: 77200340004  
Status: Excess  
Reason: Extensive deterioration  
Bldg. 22147  
Marine Corps Base  
Camp Pendleton Co: CA 92055–  
Landholding Agency: Navy  
Property Number: 77200340005  
Status: Excess  
Reason: Extensive deterioration  
Bldg. 22148  
Marine Corps Base  
Camp Pendleton Co: CA 92055–  
Landholding Agency: Navy  
Property Number: 77200340006  
Status: Excess  
Reason: Extensive deterioration  
Bldg. 22149  
Marine Corps Base  
Camp Pendleton Co: CA 92055–  
Landholding Agency: Navy  
Property Number: 77200340007  
Status: Excess  
Reason: Extensive deterioration  
Bldg. F  
Coast Guard Air Station  
San Bruno Co: San Mateo CA 94066–  
Landholding Agency: Coast Guard  
Property Number: 88200330007  
Status: Underutilized  
Reason: Secured Area  
Bldg. H  
Coast Guard Air Station  
San Bruno Co: San Mateo CA 94066–  
Landholding Agency: Coast Guard  
Property Number: 88200330008  
Status: Unutilized  
Reason: Secured Area  
Colorado  
Bldg. 574  
National Park  
Old Glacier Creek  
Rocky Mountain Co: Larimer CO 80517–  
Landholding Agency: Interior  
Property Number: 61200330001  
Status: Unutilized  
Reason: Extensive deterioration  
Bldg. B–777  
National Park  
Conservation Camp  
Rocky Mountain Co: Grand CO 80447–  
Landholding Agency: Interior  
Property Number: 61200330002  
Status: Unutilized  
Reasons: not accessible, Extensive deterioration  
Bldg. B–781  
National Park  
Conservation Camp  
Rocky Mountain Co: Grand CO 80447–  
Landholding Agency: Interior  
Property Number: 61200330003  
Status: Unutilized  
Reasons: not accessible, Extensive deterioration

Bldg. B–852  
National Park  
Conservation Camp  
Rocky Mountain Co: Grand CO 80447–  
Landholding Agency: Interior  
Property Number: 61200330004  
Status: Unutilized  
Reason: not accessible  
Wales Bldg. B–816  
National Park  
Rocky Mountain Co: Grand CO 80447–  
Landholding Agency: Interior  
Property Number: 61200330005  
Status: Unutilized  
Reason: Extensive deterioration  
Wales Bldg. B–817  
National Park  
Rocky Mountain Co: Grand CO 80447–  
Landholding Agency: Interior  
Property Number: 61200330006  
Status: Unutilized  
Reason: Extensive deterioration  
Wales Bldg. B–818  
National Park  
Rocky Mountain Co: Grand CO 80447–  
Landholding Agency: Interior  
Property Number: 61200330007  
Status: Unutilized  
Reason: Extensive deterioration  
Connecticut  
Bldgs. A92, A93, A94  
Naval Submarine Base  
Groton Co: New London CT 06349–  
Landholding Agency: Navy  
Property Number: 77200340008  
Status: Unutilized  
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area  
Florida  
U.S. Customs House  
1700 Spangler Boulevard  
Hollywood Co: Broward FL 33316–  
Landholding Agency: GSA  
Property Number: 54200140012  
Status: Surplus  
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area  
GSA Number: 4-G-FL–1173  
Bldg. C–26  
Naval Air Station  
Key West Co: Monroe FL 33040–  
Landholding Agency: Navy  
Property Number: 77200240043  
Status: Unutilized  
Reason: Extensive deterioration  
Bldg. F–44  
Naval Air Station  
Key West Co: Monroe FL 33040–  
Landholding Agency: Navy  
Property Number: 77200240044  
Status: Unutilized  
Reason: Extensive deterioration  
Bldg. 292  
Naval Air Facility  
Key West Co: Monroe FL 33040–  
Landholding Agency: Navy  
Property Number: 77200310058  
Status: Unutilized  
Reason: Extensive deterioration  
Bldg. 1481  
Naval Air Station  
Milton Co: FL 32570–6001  
Landholding Agency: Navy

Property Number: 77200310059  
 Status: Excess  
 Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

8 Bldgs.  
 Naval Air Station  
 Milton Co: FL 32570-6001  
 Location: 1440, 1440A, 1437, 1444, 1444A, 1444G, 2927, 2886  
 Landholding Agency: Navy  
 Property Number: 77200320055  
 Status: Excess  
 Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Georgia  
 Bldg. 14  
 Naval Air Station  
 Marietta Co: Cobb GA 30060-  
 Landholding Agency: Navy  
 Property Number: 77200310049  
 Status: Unutilized  
 Reasons: Within airport runway clear zone, Secured Area, Extensive deterioration

Bldg. 15  
 Naval Air Station  
 Marietta Co: Cobb GA 30060-  
 Landholding Agency: Navy  
 Property Number: 77200310050  
 Status: Unutilized  
 Reasons: Within airport runway clear zone, Secured Area, Extensive deterioration

Bldg. 109  
 Naval Air Station  
 Marietta Co: Cobb GA 30060-  
 Landholding Agency: Navy  
 Property Number: 77200310051  
 Status: Unutilized  
 Reasons: Secured Area, Extensive deterioration

Guam  
 Bldg. 138  
 Naval Forces, Marianas  
 Marianas Co: GU 96540-  
 Landholding Agency: Navy  
 Property Number: 77200210100  
 Status: Unutilized  
 Reason: Secured Area

Bldg. 460  
 Naval Forces, Marianas  
 Marianas Co: GU 96540-  
 Landholding Agency: Navy  
 Property Number: 77200210101  
 Status: Unutilized  
 Reason: Secured Area

Bldg. 1741  
 Naval Forces, Marianas  
 Marianas Co: GU 96540-  
 Landholding Agency: Navy  
 Property Number: 77200210102  
 Status: Unutilized  
 Reason: Secured Area

Bldg. 1742  
 Naval Forces, Marianas  
 Marianas Co: GU 96540-  
 Landholding Agency: Navy  
 Property Number: 77200210103  
 Status: Underutilized  
 Reason: Secured Area

Bldg. 1743  
 Naval Forces, Marianas  
 Marianas Co: GU 96540-

Landholding Agency: Navy  
 Property Number: 77200210104  
 Status: Underutilized  
 Reason: Secured Area

Bldg. 6012  
 Naval Forces, Marianas  
 Marianas Co: GU 96540-  
 Landholding Agency: Navy  
 Property Number: 77200210105  
 Status: Unutilized  
 Reason: Secured Area

Bldg. 6011  
 Naval Forces, Marianas  
 Marianas Co: GU 96540-  
 Landholding Agency: Navy  
 Property Number: 77200220024  
 Status: Unutilized  
 Reason: Secured Area

Bldgs. 23, 25, 29  
 US Naval Ship Repair Facility  
 Marianas Co: GU -  
 Landholding Agency: Navy  
 Property Number: 77200320003  
 Status: Unutilized  
 Reasons: Secured Area, Extensive deterioration

Bldgs. 31, 36, 38  
 US Naval Ship Repair Facility  
 Marianas Co: GU -  
 Landholding Agency: Navy  
 Property Number: 77200320004  
 Status: Unutilized  
 Reasons: Secured Area, Extensive deterioration

Bldgs. 93-1, 94  
 US Naval Ship Repair Facility  
 Marianas Co: GU -  
 Landholding Agency: Navy  
 Property Number: 77200320005  
 Status: Unutilized  
 Reasons: Secured Area, Extensive deterioration

Bldgs. 2001A, 2004  
 US Naval Ship Repair Facility  
 Marianas Co: GU -  
 Landholding Agency: Navy  
 Property Number: 77200320006  
 Status: Unutilized  
 Reasons: Secured Area, Extensive deterioration

Bldgs. 2008, 2062  
 US Naval Ship Repair Facility  
 Marianas Co: GU -  
 Landholding Agency: Navy  
 Property Number: 77200320007  
 Status: Unutilized  
 Reasons: Secured Area, Extensive deterioration

Bldgs. 2010, 2013, 2028  
 US Naval Ship Repair Facility  
 Marianas Co: GU -  
 Landholding Agency: Navy  
 Property Number: 77200320008  
 Status: Unutilized  
 Reasons: Secured Area, Extensive deterioration

Bldgs. 2039-2044  
 US Naval Ship Repair Facility  
 Marianas Co: GU -  
 Landholding Agency: Navy  
 Property Number: 77200320009  
 Status: Unutilized  
 Reasons: Secured Area, Extensive deterioration

Bldg. 2049  
 US Naval Ship Repair Facility  
 Marianas Co: GU -  
 Landholding Agency: Navy  
 Property Number: 77200320010  
 Status: Unutilized  
 Reasons: Secured Area, Extensive deterioration

Bldgs. 2053, 2054, 2055  
 US Naval Ship Repair Facility  
 Marianas Co: GU -  
 Landholding Agency: Navy  
 Property Number: 77200320011  
 Status: Unutilized  
 Reasons: Secured Area, Extensive deterioration

Bldgs. 2061, 2068, 2069  
 US Naval Ship Repair Facility  
 Marianas Co: GU -  
 Landholding Agency: Navy  
 Property Number: 77200320012  
 Status: Unutilized  
 Reasons: Secured Area, Extensive deterioration

Bldgs. 2070, 2071, 2074  
 US Naval Ship Repair Facility  
 Marianas Co: GU -  
 Landholding Agency: Navy  
 Property Number: 77200320013  
 Status: Unutilized  
 Reasons: Secured Area, Extensive deterioration

Bldg. 2081  
 US Naval Ship Repair Facility  
 Marianas Co: GU -  
 Landholding Agency: Navy  
 Property Number: 77200320014  
 Status: Unutilized  
 Reasons: Secured Area, Extensive deterioration

Bldgs. 2100, 2102  
 US Naval Ship Repair Facility  
 Marianas Co: GU -  
 Landholding Agency: Navy  
 Property Number: 77200320015  
 Status: Unutilized  
 Reasons: Secured Area, Extensive deterioration

Hawaii  
 Bldg. 9  
 Navy Public Works Center  
 Kolekole Road  
 Luailualei Co: Honolulu HI 96782-  
 Landholding Agency: Navy  
 Property Number: 77199530009  
 Status: Excess  
 Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. X5  
 Nanumea Road  
 Pearl Harbor Co: Honolulu HI 96782-  
 Landholding Agency: Navy  
 Property Number: 77199530010  
 Status: Excess  
 Reason: Secured Area

Bldg. SX30  
 Nanumea Road  
 Pearl Harbor Co: Honolulu HI 96860-  
 Landholding Agency: Navy  
 Property Number: 77199530011  
 Status: Excess  
 Reason: Secured Area

Bldg. Q13  
 Naval Station, Ford Island

Pearl Harbor Co: Honolulu HI 96860–  
Landholding Agency: Navy  
Property Number: 77199640035  
Status: Unutilized  
Reason: Extensive deterioration  
Bldg. Q14  
Naval Station, Ford Island  
Pearl Harbor Co: Honolulu HI 96860–  
Landholding Agency: Navy  
Property Number: 77199640036  
Status: Unutilized  
Reason: Extensive deterioration  
Bldg. 40  
Naval Magazine Lualualei  
Co: Oahu HI 96792–4301  
Landholding Agency: Navy  
Property Number: 77199830028  
Status: Unutilized  
Reason: Extensive deterioration  
Bldg. 50  
Naval Magazine Lualualei  
Co: Oahu HI 96792–4301  
Landholding Agency: Navy  
Property Number: 77199830029  
Status: Unutilized  
Reason: Extensive deterioration  
Bldg. Q76  
Naval Magazine Lualualei  
Co: Oahu HI 96792–4301  
Landholding Agency: Navy  
Property Number: 77199830030  
Status: Unutilized  
Reason: Extensive deterioration  
Bldg. Q334  
Naval Magazine Lualualei  
Co: Oahu HI 96792–4301  
Landholding Agency: Navy  
Property Number: 77199830031  
Status: Unutilized  
Reason: Extensive deterioration  
Bldg. Q410  
Naval Magazine Lualualei  
Co: Oahu HI 96792–4301  
Landholding Agency: Navy  
Property Number: 77199830034  
Status: Unutilized  
Reason: Extensive deterioration  
Bldg. Q422  
Naval Magazine Lualualei  
Co: Oahu HI 96792–4301  
Landholding Agency: Navy  
Property Number: 77199830035  
Status: Unutilized  
Reason: Extensive deterioration  
Bldg. 429  
Naval Magazine Lualualei  
Co: Oahu HI 96792–4301  
Landholding Agency: Navy  
Property Number: 77199830036  
Status: Unutilized  
Reason: Extensive deterioration  
Bldg. 431  
Naval Magazine Lualualei  
Co: Oahu HI 96792–4301  
Landholding Agency: Navy  
Property Number: 77199830037  
Status: Unutilized  
Reason: Extensive deterioration  
Bldg. 447  
Naval Magazine Lualualei  
Co: Oahu HI 96792–4301  
Landholding Agency: Navy  
Property Number: 77199830038  
Status: Unutilized

Reason: Extensive deterioration  
Facility 19  
Naval Station  
Pearl Harbor Co: Honolulu HI 96860–  
Landholding Agency: Navy  
Property Number: 77199840045  
Status: Excess  
Reason: Secured Area  
Facility SX30  
Navy Public Works Center  
Pearl Harbor Co: Honolulu HI 96860–  
Landholding Agency: Navy  
Property Number: 77199920027  
Status: Excess  
Reasons: Secured Area, Extensive deterioration  
Bldg. T47  
Naval Shipyard  
Pearl Harbor Co: Honolulu HI 96860–5350  
Landholding Agency: Navy  
Property Number: 77200240045  
Status: Unutilized  
Reason: Extensive deterioration  
Bldg. 621  
Naval Station, Pearl Harbor  
Honolulu Co: HI 96860–  
Landholding Agency: Navy  
Property Number: 77200310001  
Status: Excess  
Reason: Extensive deterioration  
Change Room  
Base Camp  
Kahoolawe Co: Maui HI  
Landholding Agency: Navy  
Property Number: 77200320059  
Status: Excess  
Reasons: Not accessible by road, Within 2000 ft. of flammable or explosive material  
Electric Generator Bldg.  
Base Camp  
Kahoolawe Co: Maui HI –  
Landholding Agency: Navy  
Property Number: 77200320060  
Status: Excess  
Reasons: Not accessible by road, Within 2000 ft. of flammable or explosive material  
Compressor Shed  
Base Camp  
Kahoolawe Co: Maui HI –  
Landholding Agency: Navy  
Property Number: 77200320061  
Status: Excess  
Reasons: Not accessible by road, Within 2000 ft. of flammable or explosive material  
System Shed  
Base Camp  
Kahoolawe Co: Maui HI  
Landholding Agency: Navy  
Property Number: 77200320062  
Status: Excess  
Reasons: Not accessible by road, Within 2000 ft. of flammable or explosive material  
Bldgs. 730, 766  
Pearl City Peninsula  
Pearl City Co: HI 96819–  
Landholding Agency: Navy  
Property Number: 77200340043  
Status: Unutilized  
Reason: Extensive deterioration  
Illinois  
Bldg. 415  
Naval Training Center  
201 N. Decatur Ave.  
Great Lakes IL

Landholding Agency: Navy  
Property Number: 77199840023  
Status: Unutilized  
Reason: Secured Area  
Bldg. 1015  
Naval Training Center  
201 N. Decatur Ave.  
Great Lakes IL  
Landholding Agency: Navy  
Property Number: 77199840024  
Status: Unutilized  
Reason: Secured Area  
Bldg. 1016  
Naval Training Center  
201 N. Decatur Ave.  
Great Lakes IL  
Landholding Agency: Navy  
Property Number: 77199840025  
Status: Unutilized  
Reason: Secured Area  
Bldg. 910  
Naval Training Center  
Great Lakes Co: IL 60088–5000  
Landholding Agency: Navy  
Property Number: 77199920055  
Status: Unutilized  
Reason: Secured Area  
Bldg. 800  
Naval Training Center  
Great Lakes Co: IL 60088–5000  
Landholding Agency: Navy  
Property Number: 77199920056  
Status: Unutilized  
Reason: Secured Area  
Bldg. 1000  
Naval Training Center  
Great Lakes Co: IL 60088–5000  
Landholding Agency: Navy  
Property Number: 77199920057  
Status: Unutilized  
Reason: Secured Area  
Bldg. 1200  
Naval Training Center  
Great Lakes Co: IL 60088–5000  
Landholding Agency: Navy  
Property Number: 77199920058  
Status: Unutilized  
Reason: Secured Area  
Bldg. 1400  
Naval Training Center  
Great Lakes Co: IL 60088–5000  
Landholding Agency: Navy  
Property Number: 77199920059  
Status: Unutilized  
Reason: Secured Area  
Bldg. 1600  
Naval Training Center  
Great Lakes Co: IL 60088–5000  
Landholding Agency: Navy  
Property Number: 77199920060  
Status: Unutilized  
Reason: Secured Area  
Bldg. 2600  
Naval Training Center  
Great Lakes Co: IL 60088–5000  
Landholding Agency: Navy  
Property Number: 77199920061  
Status: Unutilized  
Reason: Secured Area  
Indiana  
Bldg. 12  
Naval Air Warfare  
Crane Co: Martin IN 47522–



Landholding Agency: Navy  
 Property Number: 77200330041  
 Status: Excess  
 Reason: Extensive deterioration  
 Bldg. 2517  
 Naval Air Warfare  
 Crane Co: Martin IN 47522–  
 Landholding Agency: Navy  
 Property Number: 77200330042  
 Status: Excess  
 Reason: Extensive deterioration  
 Bldg. BH2  
 Naval Air Warfare  
 Crane Co: Martin IN 47522–  
 Landholding Agency: Navy  
 Property Number: 77200330043  
 Status: Excess  
 Reason: Extensive deterioration

#### Kansas

Sunflower AAP  
 DeSoto Co: Johnson KS 66018–  
 Landholding Agency: GSA  
 Property Number: 54199830010  
 Status: Excess  
 Reason: Extensive deterioration  
 GSA Number: 7–D–KS–0581

#### Maine

Bldg. M–4  
 Portsmouth Naval Shipyard  
 Kittery Co: York ME 03904–  
 Landholding Agency: Navy  
 Property Number: 77200240012  
 Status: Excess  
 Reason: Secured Area  
 Bldg. M–6  
 Portsmouth Naval Shipyard  
 Kittery Co: York ME 03904–  
 Landholding Agency: Navy  
 Property Number: 77200240013  
 Status: Excess  
 Reason: Secured Area  
 Bldg. M–9  
 Portsmouth Naval Shipyard  
 Kittery Co: York ME 03904–  
 Landholding Agency: Navy  
 Property Number: 77200240014  
 Status: Excess  
 Reason: Secured Area  
 Bldg. M–10  
 Portsmouth Naval Shipyard  
 Kittery Co: York ME 03904–  
 Landholding Agency: Navy  
 Property Number: 77200240015  
 Status: Excess  
 Reason: Secured Area  
 Bldg. M–11  
 Portsmouth Naval Shipyard  
 Kittery Co: York ME 03904–  
 Landholding Agency: Navy  
 Property Number: 77200240016  
 Status: Excess  
 Reason: Secured Area  
 Bldg. M–18  
 Portsmouth Naval Shipyard  
 Kittery Co: York ME 03904–  
 Landholding Agency: Navy  
 Property Number: 77200240017  
 Status: Excess  
 Reason: Secured Area  
 Bldg. H–29  
 Portsmouth Naval Shipyard  
 Kittery Co: York ME 03904–  
 Landholding Agency: Navy

Property Number: 77200240018  
 Status: Excess  
 Reasons: Within 2000 ft. of flammable or  
 explosive material, Secured Area  
 Bldg. 33  
 Portsmouth Naval Shipyard  
 Kittery Co: York ME 03904–  
 Landholding Agency: Navy  
 Property Number: 77200240019  
 Status: Excess  
 Reason: Secured Area  
 Bldg. 34  
 Portsmouth Naval Shipyard  
 Kittery Co: York ME 03904–  
 Landholding Agency: Navy  
 Property Number: 77200240020  
 Status: Excess  
 Reason: Secured Area  
 Bldg. 41  
 Portsmouth Naval Shipyard  
 Kittery Co: York ME 03904–  
 Landholding Agency: Navy  
 Property Number: 77200240021  
 Status: Excess  
 Reason: Secured Area  
 Bldg. 55  
 Portsmouth Naval Shipyard  
 Kittery Co: York ME 03904–  
 Landholding Agency: Navy  
 Property Number: 77200240022  
 Status: Excess  
 Reason: Secured Area  
 Bldg. 62/62A  
 Portsmouth Naval Shipyard  
 Kittery Co: York ME 03904–  
 Landholding Agency: Navy  
 Property Number: 77200240023  
 Status: Excess  
 Reason: Secured Area  
 Bldg. 63  
 Portsmouth Naval Shipyard  
 Kittery Co: York ME 03904–  
 Landholding Agency: Navy  
 Property Number: 77200240024  
 Status: Excess  
 Reason: Secured Area  
 Bldg. 65  
 Portsmouth Naval Shipyard  
 Kittery Co: York ME 03904–  
 Landholding Agency: Navy  
 Property Number: 77200240025  
 Status: Excess  
 Reason: Secured Area  
 Bldg. 158  
 Portsmouth Naval Shipyard  
 Kittery Co: York ME 03904–  
 Landholding Agency: Navy  
 Property Number: 77200240026  
 Status: Excess  
 Reasons: Within 2000 ft. of flammable or  
 explosive material, Secured Area  
 Bldg. 188  
 Portsmouth Naval Shipyard  
 Kittery Co: York ME 03904–  
 Landholding Agency: Navy  
 Property Number: 77200240027  
 Status: Excess  
 Reason: Secured Area  
 Bldg. 189  
 Portsmouth Naval Shipyard  
 Kittery Co: York ME 03904–  
 Landholding Agency: Navy  
 Property Number: 77200240028  
 Status: Excess

Reason: Secured Area  
 Bldg. 237  
 Portsmouth Naval Shipyard  
 Kittery Co: York ME 03904–  
 Landholding Agency: Navy  
 Property Number: 77200240029  
 Status: Excess  
 Reason: Secured Area  
 Bldg. 150  
 Portsmouth Naval Shipyard  
 Kittery Co: York ME  
 Landholding Agency: Navy  
 Property Number: 77200340040  
 Status: Excess  
 Reason: Extensive deterioration

#### Maryland

Bloody Pt Bar Lighthouse  
 Chesapeake Bay  
 Kent Co: MD  
 Landholding Agency: GSA  
 Property Number: 54200330002  
 Status: Excess  
 Reason: not accessible  
 GSA Number: 4–U–MD–0612  
 Bldg. 503A  
 Naval Air Station  
 Patuxent River Co: MD  
 Landholding Agency: Navy  
 Property Number: 77200330012  
 Status: Excess  
 Reason: Extensive deterioration  
 Bldgs. 200068, 200069  
 JHU Applied Physics Lab  
 Laurel Co: Howard MD 20723–  
 Landholding Agency: Navy  
 Property Number: 77200340015  
 Status: Excess  
 Reason: Extensive deterioration  
 4 Bldgs.  
 JHU Applied Physics lab  
 200075, 200076, 200077, 200079  
 Laurel Co: Howard MD 20723–  
 Landholding Agency: Navy  
 Property Number: 77200340016  
 Status: Excess  
 Reason: Extensive deterioration  
 Bldgs. 200083, 200086  
 JHU Applied Physics Lab  
 Laurel Co: Howard MD 20723–  
 Landholding Agency: Navy  
 Property Number: 77200340017  
 Status: Excess  
 Reason: Extensive deterioration  
 Bldgs. 200087, 200088, 200089  
 JHU Applied Physics Lab  
 Laurel Co: Howard MD 20723–  
 Landholding Agency: Navy  
 Property Number: 77200340018  
 Status: Excess  
 Reason: Extensive deterioration  
 5 Bldgs.  
 JHU Applied Physics Lab  
 200091, 200095, 200096, 200098, 200099  
 Laurel Co: Howard MD 20723–  
 Landholding Agency: Navy  
 Property Number: 77200340019  
 Status: Excess  
 Reason: Extensive deterioration  
 Bldgs. 200101, 200106, 200107  
 JHU Applied Physics Lab  
 Laurel Co: Howard MD 20773–  
 Landholding Agency: Navy  
 Property Number: 77200340020

Status: Excess  
Reason: Extensive deterioration  
Bldgs. 200108, 200109, 200110  
JHU Applied Physics Lab  
Laurel Co: Howard MD 20723–  
Landholding Agency: Navy  
Property Number: 77200340021  
Status: Excess  
Reason: Extensive deterioration  
Bldgs. 200120, 200121, 200122  
JHU Applied Physics Lab  
Laurel Co: Howard MD 20773–  
Landholding Agency: Navy  
Property Number: 77200340022  
Status: Excess  
Reason: Extensive deterioration  
Bldgs. 200124, 200125, 200126  
JHU Applied Physics Lab  
Laurel Co: Howard MD 20773–  
Landholding Agency: Navy  
Property Number: 77200340023  
Status: Excess  
Reason: Extensive deterioration  
Bldgs. 200128, 200133  
JHU Applied Physics Lab  
Laurel Co: Howard MD 20723–  
Landholding Agency: Navy  
Property Number: 77200340024  
Status: Excess  
Reason: Extensive deterioration  
Bldgs. 200137, 200138  
JHU Applied Physics Lab  
Laurel Co: Howard MD 20773–  
Landholding Agency: Navy  
Property Number: 77200340025  
Status: Excess  
Reason: Extensive deterioration

#### Massachusetts

Wayland Army Natl Guard Fac.  
Oxbow Road  
Wayland Co: MA 01778–  
Landholding Agency: GSA  
Property Number: 54200240007  
Status: Surplus  
Reason: Extensive deterioration  
GSA Number: 1–D–MA–0725

#### Michigan

Stroh Army Reserve Center  
17825 Sherwood Ave.  
Detroit Co: Wayne MI 00000–  
Landholding Agency: GSA  
Property Number: 54200040001  
Status: Surplus  
Reason: Within 2000 ft. of flammable or  
explosive material  
GSA Number: 1–D–MI–798  
Pipe Island Lighthouse  
St. Mary's River  
Chippewa Co: MI  
Landholding Agency: GSA  
Property Number: 54200310007  
Status: Excess  
Reason: Not accessible by road  
GSA Number: 1–U–MI–413A

#### Minnesota

Nike Battery Site, MS–40  
Castle Rock Township  
Farmington Co: Dakota MN 00000–  
Landholding Agency: GSA  
Property Number: 54200020004  
Status: Surplus  
Reason: Within 2000 ft. of flammable or  
explosive material

GSA Number: 1–I–MN–451–B  
Parcel B  
Twin Cities Army Ammunition Plant  
Arden Hills Co: MN 55112–3938  
Landholding Agency: GSA  
Property Number: 54200240015  
Status: Excess  
Reason: Within 2000 ft. of flammable or  
explosive material  
GSA Number: 1–D–MN–0578B

#### Mississippi

Bldgs. 239, 240  
Naval Air Station  
Meridian Co: Lauderdale MS 39309–  
Landholding Agency: Navy  
Property Number: 77200240060  
Status: Unutilized  
Reason: Secured Area  
Bldg. 248  
Naval Air Station  
Meridian Co: Lauderdale MS 39309–  
Landholding Agency: Navy  
Property Number: 77200240061  
Status: Unutilized  
Reason: Secured Area  
Bldg. 412  
Naval Air Station  
Meridian Co: Lauderdale MS 39309–  
Landholding Agency: Navy  
Property Number: 77200240062  
Status: Unutilized  
Reason: Secured Area

146 Units  
Naval Air Station  
Meridian Co: MS 39309–  
Landholding Agency: Navy  
Property Number: 77200310005  
Status: Unutilized  
Reason: Secured Area

#### Montana

Bldg.  
Tiber Dam  
Chester Co: Liberty MT 59522–  
Landholding Agency: Interior  
Property Number: 61200410005  
Status: Excess  
Reason: Extensive deterioration

#### Nevada

6 Bldgs.  
Dale Street Complex  
300, 400, 500, 600, Block Bldg, Valve House  
Boulder City Co: NV 89005–  
Landholding Agency: GSA  
Property Number: 54200020017  
Status: Excess  
Reason: Extensive deterioration  
GSA Number : LC–00–01–RP

#### New Hampshire

Bldg. 40  
Portsmouth Naval Shipyard  
Portsmouth Co: NH 03804–5000  
Landholding Agency: Navy  
Property Number: 77200240031  
Status: Excess  
Reasons: Within 2000 ft. of flammable or  
explosive material, Secured Area

#### New Jersey

Former NIKE Missile Battery  
Site PH–58  
Woolwich Co: Gloucester NJ

Landholding Agency: GSA  
Property Number: 54200310012  
Status: Excess  
Reason: Extensive deterioration  
GSA Number : 1–GR–NJ–0538  
Bldg. 263  
Naval Air Engineering Station  
Lakehurst Co: Ocean NJ 08733–5000  
Landholding Agency: Navy  
Property Number: 77200310002  
Status: Unutilized  
Reason: Extensive deterioration  
Bldg. GB–1  
Naval Weapons Station  
Colts Neck Co: NJ 07722–  
Landholding Agency: Navy  
Property Number: 77200310013  
Status: Unutilized  
Reason: Extensive deterioration  
Bldg. D–5  
Naval Weapons Station  
Colts Neck Co: NJ 07722–  
Landholding Agency: Navy  
Property Number: 77200310014  
Status: Unutilized  
Reason: Extensive deterioration  
Bldg. 6A  
Naval Weapons Station  
Colts Neck Co: NJ 07722–  
Landholding Agency: Navy  
Property Number: 77200310015  
Status: Unutilized  
Reason: Extensive deterioration  
Bldg. C–14  
Naval Weapons Station  
Colts Neck Co: NJ 07722–  
Landholding Agency: Navy  
Property Number: 77200310016  
Status: Unutilized  
Reason: Extensive deterioration  
Bldg. C–31  
Naval Weapons Station  
Colts Neck Co: NJ 07722–  
Landholding Agency: Navy  
Property Number: 77200310017  
Status: Unutilized  
Reason: Extensive deterioration  
Bldg. C–36  
Naval Weapons Station  
Colts Neck Co: NJ 07722–  
Landholding Agency: Navy  
Property Number: 77200310018  
Status: Unutilized  
Reason: Extensive deterioration  
Bldg. S–179  
Naval Weapons Station  
Colts Neck Co: NJ 07722–  
Landholding Agency: Navy  
Property Number: 77200310019  
Status: Unutilized  
Reason: Extensive deterioration  
Bldg. 531  
Naval Weapons Station  
Colts Neck Co: NJ 07722–  
Landholding Agency: Navy  
Property Number: 77200310020  
Status: Unutilized  
Reason: Extensive deterioration  
Bldg. 569  
Naval Weapons Station  
Colts Neck Co: NJ 07722–  
Landholding Agency: Navy  
Property Number: 77200310021  
Status: Unutilized

Reason: Extensive deterioration  
 Bldg. 570  
 Naval Weapons Station  
 Colts Neck Co: NJ 07722–  
 Landholding Agency: Navy  
 Property Number: 77200310022  
 Status: Unutilized  
 Reason: Extensive deterioration  
 Bldg. 589  
 Naval Weapons Station  
 Colts Neck Co: NJ 07722–  
 Landholding Agency: Navy  
 Property Number: 77200310023  
 Status: Unutilized  
 Reason: Extensive deterioration  
 Bldg. 260  
 Coast Guard Training Center  
 Cape May Co: NJ 08204–  
 Landholding Agency: Coast Guard  
 Property Number: 88200330001  
 Status: Excess  
 Reasons: Secured Area, Extensive deterioration  
 Structure U02  
 Coast Guard Training Center  
 Cape May Co: NJ 08204–  
 Landholding Agency: Coast Guard  
 Property Number: 88200330002  
 Status: Excess  
 Reason: Secured Area

New Mexico  
 Bldg. N149  
 Naval Air Warfare  
 White Sands Co: NM 88002–  
 Landholding Agency: Navy  
 Property Number: 77200110104  
 Status: Excess  
 Reason: Extensive deterioration

New York  
 Bldgs/Pier/Field  
 USCG/Ft. Totten  
 Borough of Queens Co: Flushing NY  
 Landholding Agency: GSA  
 Property Number: 54200320015  
 Status: Surplus  
 Reason: contamination  
 GSA Number: 1–U–NY–882

Gardiners Point  
 Long Island Co: Suffolk NY  
 Landholding Agency: GSA  
 Property Number: 54200340003  
 Status: Excess  
 Reasons: no access/unexploded ordnance  
 Extensive deterioration  
 GSA Number: 1–N–NY–897

Ohio  
 Army Reserve Center  
 Plymouth Road  
 Jamestown Co: Greene OH 45335–  
 Landholding Agency: GSA  
 Property Number: 54200340009  
 Status: Surplus  
 Reason: Extensive deterioration  
 GSA Number: 4–G–VA–0734

Oregon  
 Bldg. 30  
 Naval Weapons Systems Training  
 Boardman Co: Morrow OR  
 Landholding Agency: Navy  
 Property Number: 77200210070  
 Status: Unutilized  
 Reason: Secured Area

Bldg. 31  
 Naval Weapons Systems Training  
 Boardman Co: Morrow OR –  
 Landholding Agency: Navy  
 Property Number: 77200210071  
 Status: Unutilized  
 Reason: Secured Area

Bldg. 32  
 Naval Weapons Systems Training  
 Boardman Co: Morrow OR –  
 Landholding Agency: Navy  
 Property Number: 77200210072  
 Status: Unutilized  
 Reason: Secured Area

Bldg. 33  
 Naval Weapons Systems Training  
 Boardman Co: Morrow OR –  
 Landholding Agency: Navy  
 Property Number: 77200210073  
 Status: Unutilized  
 Reason: Secured Area

Bldg. 35  
 Naval Weapons Systems Training  
 Boardman Co: Morrow OR –  
 Landholding Agency: Navy  
 Property Number: 77200210074  
 Status: Unutilized  
 Reason: Secured Area

Bldg. 37  
 Naval Weapons Systems Training  
 Boardman Co: Morrow OR –  
 Landholding Agency: Navy  
 Property Number: 77200210075  
 Status: Unutilized  
 Reason: Secured Area

#### Pennsylvania

Bldg. 619  
 Naval Surface Warfare Center  
 Philadelphia Co: PA 19112–  
 Landholding Agency: Navy  
 Property Number: 77200320063  
 Status: Excess  
 Reason: Within 2000 ft. of flammable or explosive material

Bldg. 106  
 Naval Support Activity  
 Mechanicsburg Co: Cumberland PA 17055–0788

Landholding Agency: Navy  
 Property Number: 77200330013  
 Status: Excess  
 Reason: Extensive deterioration

Bldg. 906  
 Naval Support Activity  
 Mechanicsburg Co: Cumberland PA 17055–0788

Landholding Agency: Navy  
 Property Number: 77200330014  
 Status: Excess  
 Reason: Extensive deterioration

Bldg. 567  
 Naval Surface Warfare Center  
 Philadelphia Co: PA 19112–  
 Landholding Agency: Navy  
 Property Number: 77200330060  
 Status: Excess  
 Reason: Within 2000 ft. of flammable or explosive material

#### South Carolina

Bldg. 7  
 Naval Weapons Station  
 Goose Creek Co: Berkeley SC 29445–  
 Landholding Agency: Navy

Property Number: 77200040030  
 Status: Unutilized  
 Reason: Secured Area

Bldg. 314  
 Naval Weapons Station  
 Goose Creek Co: Berkeley SC 29445–  
 Landholding Agency: Navy  
 Property Number: 77200040031  
 Status: Unutilized  
 Reason: Secured Area

17 Bldgs.  
 Naval Weapons Station  
 Goose Creek Co: Berkeley SC 29445–  
 Landholding Agency: Navy  
 Property Number: 77200320017  
 Status: Unutilized  
 Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

#### Tennessee

22 Bldgs.  
 Volunteer Army Ammunition Plant  
 Warehouses (Southern Portion)  
 Chattanooga Co: Hamilton TN 37421–  
 Landholding Agency: GSA  
 Property Number: 54199930016  
 Status: Surplus  
 Reason: Within 2000 ft. of flammable or explosive material  
 GSA Number: 4–D–TN–594F

17 Bldgs.  
 Volunteer Army Ammunition Plant  
 Acid Production  
 Chattanooga Co: Hamilton TN 37421–  
 Landholding Agency: GSA  
 Property Number: 54199930017  
 Status: Surplus  
 Reasons: Within 2000 ft. of flammable or explosive material contamination  
 GSA Number: 4–D–TN–594F

41 Facilities  
 Volunteer Army Ammunition Plant  
 TNT Production  
 Chattanooga Co: Hamilton TN 37421–  
 Landholding Agency: GSA  
 Property Number: 54199930018  
 Status: Surplus  
 Reason: contamination  
 GSA Number: 4–D–TN–594F

5 Facilities  
 Volunteer Army Ammunition Plant  
 Waste Water Treatment  
 Chattanooga Co: Hamilton TN 37421–  
 Landholding Agency: GSA  
 Property Number: 54199930019  
 Status: Surplus  
 Reason: Extensive deterioration  
 GSA Number: 4–D–TN–594F

6 Bldgs.  
 Volunteer Army Ammunition Plant  
 Offices (Southern Portion)  
 Chattanooga Co: Hamilton TN 37421–  
 Landholding Agency: GSA  
 Property Number: 54199930023  
 Status: Surplus  
 Reason: Within 2000 ft. of flammable or explosive material  
 GSA Number: 4–D–TN–594F  
 Clinton Property  
 Stones River National Battlefield  
 Murfreesboro Co: Rutherford TN 37129–  
 Landholding Agency: Interior  
 Property Number: 61200330012  
 Status: Excess  
 Reason: Extensive deterioration

Smith Property  
Stones River National Battlefield  
Murfreesboro Co: Rutherford TN 37129–  
Landholding Agency: Interior  
Property Number: 61200330013  
Status: Excess  
Reason: Extensive deterioration  
5 Bldgs.  
Naval Support Activity 430, 434, 762, 1765,  
397  
Millington Co: TN 38054–  
Landholding Agency: Navy  
Property Number: 77200330045  
Status: Excess  
Reason: Secured Area  
Texas  
Former Army Aircraft Plant  
Industrial Road  
Saginaw Co: Tarrant TX 76131–  
Landholding Agency: GSA  
Property Number: 54200310009  
Status: Surplus  
Reasons: Within 2000 ft. of flammable or  
explosive material; Extensive deterioration  
GSA Number: 7–D–TX–0879  
Border Patrol Station  
E. Hwy 83  
Rio Grande Co: Starr TX 75247–4607  
Landholding Agency: GSA  
Property Number: 54200410012  
Status: Surplus  
Reason: Within 2000 ft. of flammable or  
explosive material  
GSA Number: 7–J–TX–1079  
House #1, Tract 105–70  
San Antonio Missions  
San Antonio Co: Bexar TX 78214–  
Landholding Agency: Interior  
Property Number: 61200330032  
Status: Unutilized  
Reason: Extensive deterioration  
House #2, Tract 105–70  
San Antonio Missions  
San Antonio Co: Bexar TX 78214–  
Landholding Agency: Interior  
Property Number: 61200330033  
Status: Unutilized  
Reason: Extensive deterioration  
House #3, Tract 105–70  
San Antonio Missions  
San Antonio Co: Bexar TX 78214–  
Landholding Agency: Interior  
Property Number: 61200330034  
Status: Unutilized  
Reason: Extensive deterioration  
House #4, Tract 105–70  
San Antonio Missions  
San Antonio Co: Bexar TX 78214–  
Landholding Agency: Interior  
Property Number: 61200330035  
Status: Unutilized  
Reason: Extensive deterioration  
House #7, Tract 105–70  
San Antonio Missions  
San Antonio Co: Bexar TX 78214–  
Landholding Agency: Interior  
Property Number: 61200330036  
Status: Unutilized  
Reason: Extensive deterioration  
Bldg. 113  
Naval Air Station  
Corpus Christi Co: Nueces TX 78419–  
Landholding Agency: Navy  
Property Number: 77200310054

Status: Excess  
Reason: Within 2000 ft. of flammable or  
explosive material  
Facility 13  
Naval Air Station  
Corpus Christi Co: Nueces TX 78419–5021  
Landholding Agency: Navy  
Property Number: 77200320051  
Status: Excess  
Reason: Extensive deterioration  
Facility 94  
Naval Air Station  
Corpus Christi Co: Nueces TX 78419–5021  
Landholding Agency: Navy  
Property Number: 77200320052  
Status: Excess  
Reason: Extensive deterioration  
Facility 1777  
Naval Air Station  
Corpus Christi Co: Nueces TX 78419–5021  
Landholding Agency: Navy  
Property Number: 77200320053  
Status: Excess  
Reason: Extensive deterioration  
Bldg. 1302  
Naval Air Station  
Ft. Worth Co: Tarrant TX 76127–6200  
Landholding Agency: Navy  
Property Number: 77200330046  
Status: Unutilized  
Reasons: Secured Area; Extensive  
deterioration  
Bldg. 1320  
Naval Air Station  
Ft. Worth Co: Tarrant TX 76127–6200  
Landholding Agency: Navy  
Property Number: 77200330047  
Status: Unutilized  
Reasons: Secured Area; Extensive  
deterioration  
Bldg. 1509  
Naval Air Station  
Ft. Worth Co: Tarrant TX 76127–  
Landholding Agency: Navy  
Property Number: 77200330048  
Status: Unutilized  
Reasons: Secured Area; Extensive  
deterioration  
Virginia  
Bldg. 720  
Langley Air Force Base  
Hampton Co: VA 23665–  
Landholding Agency: GSA  
Property Number: 54200320008  
Status: Excess  
Reason: Secured Area  
GSA Number: 4–Z–VA–740–A  
Church Street Quarters (204)  
Colonial National Park  
Yorktown Co: York VA 23690–  
Landholding Agency: Interior  
Property Number: 61200330008  
Status: Excess  
Reason: Extensive deterioration  
Church Street Quarters (205)  
Colonial National Park  
Yorktown Co: York VA 23690–  
Landholding Agency: Interior  
Property Number: 61200330009  
Status: Excess  
Reason: Extensive deterioration  
Nelson Property  
Colonial National Park  
Yorktown Co: York VA 23690–

Landholding Agency: Interior  
Property Number: 61200330010  
Status: Excess  
Reason: Extensive deterioration  
Ferris Property  
Yorktown Co: VA 23690–  
Landholding Agency: Interior  
Property Number: 61200330023  
Status: Excess  
Reason: Extensive deterioration  
Bldg. 02  
Naval Weapons Station  
Yorktown Co: York VA 23691–  
Landholding Agency: Navy  
Property Number: 77199810073  
Status: Excess  
Reason: Extensive deterioration  
Bldg. 449  
Norfolk Naval Shipyard  
Portsmouth Co: VA 23709–  
Landholding Agency: Navy  
Property Number: 77199920068  
Status: Excess  
Reason: Extensive deterioration  
Bldg. 450  
Norfolk Naval Shipyard  
Portsmouth Co: VA 23709–  
Landholding Agency: Navy  
Property Number: 77199920069  
Status: Excess  
Reason: Extensive deterioration  
Bldg. 451  
Norfolk Naval Shipyard  
Portsmouth Co: VA 23709–  
Landholding Agency: Navy  
Property Number: 77199920070  
Status: Excess  
Reason: Extensive deterioration  
Bldg. 453  
Norfolk Naval Shipyard  
Portsmouth Co: VA 23709–  
Landholding Agency: Navy  
Property Number: 77199920071  
Status: Excess  
Reason: Extensive deterioration  
Bldg. 454  
Norfolk Naval Shipyard  
Portsmouth Co: VA 23709–  
Landholding Agency: Navy  
Property Number: 77199920073  
Status: Excess  
Reason: Extensive deterioration  
Bldg. 708  
Norfolk Naval Shipyard  
Portsmouth Co: VA 23709–  
Landholding Agency: Navy  
Property Number: 77199920074  
Status: Excess  
Reason: Extensive deterioration  
Bldg. 709  
Norfolk Naval Shipyard  
Portsmouth Co: VA 23709–  
Landholding Agency: Navy  
Property Number: 77199920075  
Status: Excess  
Reason: Extensive deterioration  
Bldg. 710  
Norfolk Naval Shipyard  
Portsmouth Co: VA 23709–  
Landholding Agency: Navy  
Property Number: 77199920075  
Status: Excess  
Reason: Extensive deterioration  
Bldg. 711

Norfolk Naval Shipyard  
Portsmouth Co: VA 23709–  
Landholding Agency: Navy  
Property Number: 77199920076  
Status: Excess  
Reason: Extensive deterioration

Bldg. 712  
Norfolk Naval Shipyard  
Portsmouth Co: VA 23709–  
Landholding Agency: Navy  
Property Number: 77199920077  
Status: Excess  
Reason: Extensive deterioration

Bldg. 713  
Norfolk Naval Shipyard  
Portsmouth Co: VA 23709–  
Landholding Agency: Navy  
Property Number: 77199920078  
Status: Excess  
Reason: Extensive deterioration

Bldg. 714  
Norfolk Naval Shipyard  
Portsmouth Co: VA 23709–  
Landholding Agency: Navy  
Property Number: 77199920079  
Status: Excess  
Reason: Extensive deterioration

Bldg. 715  
Norfolk Naval Shipyard  
Portsmouth Co: VA 23709–  
Landholding Agency: Navy  
Property Number: 77199920080  
Status: Excess  
Reason: Extensive deterioration

Bldg. 716  
Norfolk Naval Shipyard  
Portsmouth Co: VA 23709–  
Landholding Agency: Navy  
Property Number: 77199920081  
Status: Excess  
Reason: Extensive deterioration

Bldg. 717  
Norfolk Naval Shipyard  
Portsmouth Co: VA 23709–  
Landholding Agency: Navy  
Property Number: 77199920082  
Status: Excess  
Reason: Extensive deterioration

Bldg. 718  
Norfolk Naval Shipyard  
Portsmouth Co: VA 23709–  
Landholding Agency: Navy  
Property Number: 77199920083  
Status: Excess  
Reason: Extensive deterioration

Bldg. 1454  
Norfolk Naval Shipyard  
Portsmouth Co: VA 23709–  
Landholding Agency: Navy  
Property Number: 77199920084  
Status: Excess  
Reason: Extensive deterioration

Bldg. 7  
Naval Weapons Station  
Yorktown Co: VA 23691–  
Landholding Agency: Navy  
Property Number: 77200020009  
Status: Unutilized  
Reasons: Within 2000 ft. of flammable or  
explosive material, Secured Area

Bldg. 12  
Naval Weapons Station  
Yorktown Co: VA 23691–  
Landholding Agency: Navy

Property Number: 77200020010  
Status: Unutilized  
Reasons: Within 2000 ft. of flammable or  
explosive material, Secured Area,  
Extensive deterioration

Bldg. 24  
Naval Weapons Station  
Yorktown Co: VA 23691–  
Landholding Agency: Navy  
Property Number: 77200020011  
Status: Unutilized  
Reasons: Within 2000 ft. of flammable or  
explosive material, Secured Area

Bldg. 34  
Naval Weapons Station  
Yorktown Co: VA 23691–  
Landholding Agency: Navy  
Property Number: 77200020012  
Status: Unutilized  
Reasons: Within 2000 ft. of flammable or  
explosive material, Secured Area,  
Extensive deterioration

Bldg. 103B  
Naval Weapons Station  
Yorktown Co: VA 23691–  
Landholding Agency: Navy  
Property Number: 77200120049  
Status: Excess  
Reasons: Secured Area, Extensive  
deterioration

Bldg. B402  
Naval Surface Warfare Center  
Dahlgren Co: King George VA 22448–  
Landholding Agency: Navy  
Property Number: 77200120059  
Status: Unutilized  
Reason: Extensive deterioration

Bldg. B425  
Naval Surface Warfare Center  
Dahlgren Co: King George VA 22448–  
Landholding Agency: Navy  
Property Number: 77200120060  
Status: Unutilized  
Reason: Extensive deterioration

Bldg. B1379  
Naval Surface Warfare Center  
Dahlgren Co: King George VA 22448–  
Landholding Agency: Navy  
Property Number: 77200130066  
Status: Unutilized  
Reason: Extensive deterioration

Bldg. 51  
Naval Weapons Station  
Yorktown Co: VA 23691–  
Landholding Agency: Navy  
Property Number: 77200220054  
Status: Excess  
Reasons: Within 2000 ft. of flammable or  
explosive material, Secured Area,  
Extensive deterioration

Bldg. 79  
Naval Weapons Station  
Yorktown Co: VA 23691–  
Landholding Agency: Navy  
Property Number: 77200220055  
Status: Excess  
Reasons: Within 2000 ft. of flammable or  
explosive material, Secured Area

Bldg. 89  
Naval Weapons Station  
Yorktown Co: VA 23691–  
Landholding Agency: Navy  
Property Number: 77200220056  
Status: Excess

Reasons: Within 2000 ft. of flammable or  
explosive material, Secured Area  
5 Bldgs.

Naval Weapons Station #90, 91, 95, 96, 101  
Yorktown Co: VA 23691–  
Landholding Agency: Navy  
Property Number: 77200220057  
Status: Excess  
Reasons: Within 2000 ft. of flammable or  
explosive material, Secured Area,  
Extensive deterioration

Bldg. 119A  
Naval Weapons Station  
Yorktown Co: VA 23691–  
Landholding Agency: Navy  
Property Number: 77200220058  
Status: Excess  
Reasons: Within 2000 ft. of flammable or  
explosive material, Secured Area

Bldg. 378  
Naval Weapons Station  
Yorktown Co: VA 23691–  
Landholding Agency: Navy  
Property Number: 77200220059  
Status: Excess  
Reasons: Within 2000 ft. of flammable or  
explosive material, Secured Area

Bldg. 398  
Naval Weapons Station  
Yorktown Co: VA 23691–  
Landholding Agency: Navy  
Property Number: 77200220060  
Status: Excess  
Reasons: Within 2000 ft. of flammable or  
explosive material, Secured Area,  
Extensive deterioration

Bldg. 415  
Naval Weapons Station  
Yorktown Co: VA 23691–  
Landholding Agency: Navy  
Property Number: 77200220061  
Status: Excess  
Reasons: Within 2000 ft. of flammable or  
explosive material, Secured Area,  
Extensive deterioration

Bldgs. 440, 441  
Naval Weapons Station  
Yorktown Co: VA 23691–  
Landholding Agency: Navy  
Property Number: 77200220062  
Status: Excess  
Reasons: Within 2000 ft. of flammable or  
explosive material, Secured Area,  
Extensive deterioration

Bldg. 508  
Naval Weapons Station  
Yorktown Co: VA 23691–  
Landholding Agency: Navy  
Property Number: 77200220063  
Status: Excess  
Reasons: Within 2000 ft. of flammable or  
explosive material, Secured Area,  
Extensive deterioration

Bldg. 510  
Naval Weapons Station  
Yorktown Co: VA 23691–  
Landholding Agency: Navy  
Property Number: 77200220064  
Status: Excess  
Reasons: Within 2000 ft. of flammable or  
explosive material, Secured Area,  
Extensive deterioration

Bldg. 605  
Naval Weapons Station

Yorktown Co: VA 23691–  
Landholding Agency: Navy  
Property Number: 77200220065  
Status: Excess  
Reasons: Within 2000 ft. of flammable or  
explosive material, Secured Area  
Bldg. 624  
Naval Weapons Station  
Yorktown Co: VA 23691–  
Landholding Agency: Navy  
Property Number: 77200220066  
Status: Excess  
Reasons: Within 2000 ft. of flammable or  
explosive material, Secured Area,  
Extensive deterioration  
Bldg. 688  
Naval Weapons Station  
Yorktown Co: VA 23691–  
Landholding Agency: Navy  
Property Number: 77200220067  
Status: Excess  
Reasons: Within 2000 ft. of flammable or  
explosive material, Secured Area  
Bldgs. 1271, 1272, 1273  
Naval Weapons Station  
Yorktown Co: VA 23691–  
Landholding Agency: Navy  
Property Number: 77200220068  
Status: Excess  
Reason: Secured Area  
Bldgs. 1465, 1466  
Naval Weapons Station  
Yorktown Co: VA 23691–  
Landholding Agency: Navy  
Property Number: 77200220069  
Status: Excess  
Reasons: Within 2000 ft. of flammable or  
explosive material, Secured Area  
Bldgs. 1467, 1468, 1469  
Naval Weapons Station  
Yorktown Co: VA 23691–  
Landholding Agency: Navy  
Property Number: 77200220070  
Status: Excess  
Reasons: Within 2000 ft. of flammable or  
explosive material, Secured Area  
Bldg. 1799  
Naval Weapons Station  
Yorktown Co: VA 23691–  
Landholding Agency: Navy  
Property Number: 77200220071  
Status: Excess  
Reasons: Within 2000 ft. of flammable or  
explosive material, Secured Area  
Bldg. CAD40  
Naval Weapons Station  
Yorktown Co: VA 23691–  
Landholding Agency: Navy  
Property Number: 77200220084  
Status: Excess  
Reason: Secured Area  
Bldg. CAD41  
Naval Weapons Station  
Yorktown Co: VA 23691–  
Landholding Agency: Navy  
Property Number: 77200220085  
Status: Excess  
Reason: Secured Area  
Bldg. CAD479  
Naval Weapons Station  
Yorktown Co: VA 23691–  
Landholding Agency: Navy  
Property Number: 77200220086  
Status: Excess

Reason: Secured Area  
Pier R–1  
Naval Weapons Station  
Yorktown Co: VA 23691–  
Landholding Agency: Navy  
Property Number: 77200240053  
Status: Unutilized  
Reasons: Within 2000 ft. of flammable or  
explosive material, Secured Area  
Bldg. 709  
Naval Weapons Station  
Yorktown Co: VA 23691–  
Landholding Agency: Navy  
Property Number: 77200240054  
Status: Unutilized  
Reasons: Within 2000 ft. of flammable or  
explosive material, Secured Area  
Bldg. 1443/adj. bldg.  
Norfolk Naval Shipyard  
Portsmouth Co: VA 23704–  
Landholding Agency: Navy  
Property Number: 77200320018  
Status: Excess  
Reason: Extensive deterioration  
Bldg. CG–2 (0S01)  
USCG CAMSLANT  
Chesapeake Co: VA  
Landholding Agency: Coast Guard  
Property Number: 88200330003  
Status: Unutilized  
Reason: Secured Area  
Bldg. CG–6 (0S02)  
USCG CAMSLANT  
Chesapeake Co: VA  
Landholding Agency: Coast Guard  
Property Number: 88200330004  
Status: Unutilized  
Reason: Secured Area  
Bldg. (0V02)  
USCG CAMSLANT  
Chesapeake Co: VA  
Landholding Agency: Coast Guard  
Property Number: 88200330005  
Status: Unutilized  
Reasons: Secured Area; Extensive  
deterioration  
Bldg. (0V03)  
USCG CAMSLANT  
Chesapeake Co: VA  
Landholding Agency: Coast Guard  
Property Number: 88200330006  
Status: Unutilized  
Reasons: Secured Area; Extensive  
deterioration  
Washington  
Barn  
Heart K Ranch  
Near Thorp Co: Kittitas WA 98946–  
Landholding Agency: Interior  
Property Number: 61200330014  
Status: Unutilized  
Reason: Extensive deterioration  
Garage/Shop  
Heart K Ranch  
Near Thorp Co: Kittitas WA 98946–  
Landholding Agency: Interior  
Property Number: 61200330015  
Status: Unutilized  
Reason: Extensive deterioration  
1-Stall Garage  
Heart K Ranch  
Near Thorp Co: Kittitas WA 98946–  
Landholding Agency: Interior  
Property Number: 61200330016

Status: Unutilized  
Reason: Extensive deterioration  
Residence  
Heart K Ranch  
Near Thorp Co: Kittitas WA 98946–  
Landholding Agency: Interior  
Property Number: 61200330017  
Status: Unutilized  
Reason: Extensive deterioration  
Storage  
Heart K Ranch  
Near Thorp Co: Kittitas WA 98946–  
Landholding Agency: Interior  
Property Number: 61200330018  
Status: Unutilized  
Reason: Extensive deterioration  
Residence No. 50  
1807 Rest Haven Road  
Yakima Co: WA 98901–  
Landholding Agency: Interior  
Property Number: 61200330019  
Status: Unutilized  
Reason: Extensive deterioration  
Cow Barn 1807 Rest Haven Road  
Yakima Co: WA 98901–  
Landholding Agency: Interior  
Property Number: 61200330020  
Status: Unutilized  
Reason: Extensive deterioration  
Chicken Coop 1807 Rest Haven Road  
Yakima Co: WA 98901–  
Landholding Agency: Interior  
Property Number: 61200330021  
Status: Unutilized  
Reason: Extensive deterioration  
Garage/No. 804  
Columbia Basin  
George Co: Grant WA 98848–  
Landholding Agency: Interior  
Property Number: 61200330024  
Status: Unutilized  
Reason: Extensive deterioration  
Residence No. 804  
Columbia Basin  
George Co: Grant WA 98848–  
Landholding Agency: Interior  
Property Number: 61200330025  
Status: Unutilized  
Reason: Extensive deterioration  
Garage/No. 801  
Columbia Basin  
George Co: Grant WA 98848–  
Landholding Agency: Interior  
Property Number: 61200330026  
Status: Unutilized  
Reason: Extensive deterioration  
Residence No. 801  
Columbia Basin  
George Co: Grant WA 98848–  
Landholding Agency: Interior  
Property Number: 61200330027  
Status: Unutilized  
Reason: Extensive deterioration  
Garage/No. 305  
Columbia Basin  
Soap Lake Co: Grant WA 98851–  
Landholding Agency: Interior  
Property Number: 61200330028  
Status: Unutilized  
Reason: Extensive deterioration  
Residence No. 305  
Columbia Basin  
Soap Lake Co: Grant WA 98851–  
Landholding Agency: Interior

Property Number: 61200330029  
 Status: Unutilized  
 Reason: Extensive deterioration  
 Garage/Residence No. 304  
 Columbia Basin  
 Soap Lake Co: Grant WA 98851–  
 Landholding Agency: Interior  
 Property Number: 61200330030  
 Status: Unutilized  
 Reason: Extensive deterioration  
 Residence No. 304  
 Columbia Basin  
 Soap Lake Co: Grant WA 98851–  
 Landholding Agency: Interior  
 Property Number: 61200330031  
 Status: Unutilized  
 Reason: Extensive deterioration  
 Bldg. 81  
 39307 Kelly Road  
 Benton City Co: Benton WA 99320–  
 Landholding Agency: Interior  
 Property Number: 61200340001  
 Status: Unutilized  
 Reason: Extensive deterioration  
 Garage/81  
 39307 Kelly Road  
 Benton City Co: Benton WA 99320–  
 Landholding Agency: Interior  
 Property Number: 61200340002  
 Status: Unutilized  
 Reason: Extensive deterioration  
 Bldg. 73  
 1171 Beane Road  
 Moxee Co: Yakima WA 98936–  
 Landholding Agency: Interior  
 Property Number: 61200340003  
 Status: Unutilized  
 Reason: Extensive deterioration  
 Garage/73  
 1171 Beane Road  
 Moxee Co: Yakima WA 98936–  
 Landholding Agency: Interior  
 Property Number: 61200340004  
 Status: Unutilized  
 Reason: Extensive deterioration  
 Bldg. 129  
 1917 Marsh Road  
 Yakima Co: WA 98901–  
 Landholding Agency: Interior  
 Property Number: 61200340005  
 Status: Unutilized  
 Reason: Extensive deterioration  
 Bldg. 6661  
 Naval Submarine Base, Bangor  
 Silverdale Co: Kitsap WA 98315–6499  
 Landholding Agency: Navy  
 Property Number: 77199730039  
 Status: Unutilized  
 Reason: Secured Area  
 Bldg. 604  
 Manchester Fuel Department  
 Port Orchard WA 98366–  
 Landholding Agency: Navy  
 Property Number: 77199810170  
 Status: Excess  
 Reasons: Within 2000 ft. of flammable or  
 explosive material; Secured Area  
 Bldg. 288  
 Fleet Industrial Supply Center  
 Bremerton WA 98314–5100  
 Landholding Agency: Navy  
 Property Number: 77199810171  
 Status: Excess  
 Reasons: Within 2000 ft. of flammable or  
 explosive material; Secured Area

Bldg. 47  
 Naval Radio Station T Jim Creek  
 Arlington Co: Snohomish WA 98223–  
 Landholding Agency: Navy  
 Property Number: 77199820056  
 Status: Unutilized  
 Reasons: Secured Area  
 Extensive deterioration  
 Bldg. 48  
 Naval Radio Station T Jim Creek  
 Arlington Co: Snohomish WA 98223–  
 Landholding Agency: Navy  
 Property Number: 77199820057  
 Status: Unutilized  
 Reasons: Secured Area  
 Extensive deterioration  
 Coal Handling Facilities  
 Puget Sound Naval Shipyard  
 #908, 919, 926–929  
 Bremerton WA 98314–5000  
 Landholding Agency: Navy  
 Property Number: 77199820142  
 Status: Excess  
 Reason: Within 2000 ft. of flammable or  
 explosive material  
 Bldg. 193  
 Puget Sound Naval Shipyard  
 Bremerton WA 98310–  
 Landholding Agency: Navy  
 Property Number: 77199820143  
 Status: Unutilized  
 Reason: contamination  
 Bldg. 202  
 Naval Air Station Whidbey Island  
 Oak Harbor WA 98278–  
 Landholding Agency: Navy  
 Property Number: 77199830019  
 Status: Excess  
 Reason: Within 2000 ft. of flammable or  
 explosive material  
 Bldg. 2649  
 Naval Air Station Whidbey Island  
 Oak Harbor WA 98278–  
 Landholding Agency: Navy  
 Property Number: 77199830020  
 Status: Excess  
 Reasons: Within 2000 ft. of flammable or  
 explosive material; Extensive deterioration  
 Bldgs. 35, 36  
 Naval Radio Station T Jim Creek  
 Arlington Co: Snohomish WA 98223–  
 Landholding Agency: Navy  
 Property Number: 77199830076  
 Status: Unutilized  
 Reason: Extensive deterioration  
 Bldg. 918  
 Puget Sound Naval Shipyard  
 Bremerton WA 98314–5000  
 Landholding Agency: Navy  
 Property Number: 77199840020  
 Status: Unutilized  
 Reasons: Within 2000 ft. of flammable or  
 explosive material; Secured Area  
 Bldg. 894  
 Naval Undersea Warfare Center  
 Keyport Co: Kitsap WA 98345–7610  
 Landholding Agency: Navy  
 Property Number: 77199920085  
 Status: Underutilized  
 Reasons: Within 2000 ft. of flammable or  
 explosive material; Secured Area  
 Bldg. 73  
 Naval Undersea Warfare Center  
 Keyport Co: Kitsap WA 98345–

Landholding Agency: Navy  
 Property Number: 77199920152  
 Status: Underutilized  
 Reasons: Within 2000 ft. of flammable or  
 explosive material; Secured Area  
 Bldg. 210A  
 Naval Station Bremerton  
 Bremerton Co: WA 98314–  
 Landholding Agency: Navy  
 Property Number: 77199930021  
 Status: Excess  
 Reasons: Within 2000 ft. of flammable or  
 explosive material, Secured Area  
 Bldg. 511  
 Naval Station Bremerton  
 Bremerton Co: WA 98314–  
 Landholding Agency: Navy  
 Property Number: 77199930022  
 Status: Excess  
 Reasons: Within 2000 ft. of flammable or  
 explosive material, Secured Area,  
 Extensive deterioration  
 Bldg. 527  
 Naval Station Bremerton  
 Bremerton Co: WA 98314–  
 Landholding Agency: Navy  
 Property Number: 77199930023  
 Status: Excess  
 Reasons: Within 2000 ft. of flammable or  
 explosive material, Secured Area  
 Bldg. 97  
 Naval Air Station  
 Whidbey Island  
 Oak Harbor Co: WA 98278–  
 Landholding Agency: Navy  
 Property Number: 77199930040  
 Status: Unutilized  
 Reason: Extensive deterioration  
 Bldg. 331  
 Naval Undersea Warfare Center  
 Keyport Co: Kitsap WA 98345–  
 Landholding Agency: Navy  
 Property Number: 77199930041  
 Status: Unutilized  
 Reasons: Secured Area, Extensive  
 deterioration  
 Bldg. 786  
 Naval Undersea Warfare Center  
 Keyport Co: Kitsap WA 98345–  
 Landholding Agency: Navy  
 Property Number: 77199930042  
 Status: Unutilized  
 Reasons: Secured Area, Extensive  
 deterioration  
 Bldg. 15  
 Naval Air Station, Whidbey Island  
 Oak Harbor Co: WA 98278–3500  
 Landholding Agency: Navy  
 Property Number: 77199930071  
 Status: Unutilized  
 Reason: Extensive deterioration  
 Bldg. 119  
 Naval Air Station, Whidbey Island  
 Oak Harbor Co: WA 98278–3500  
 Landholding Agency: Navy  
 Property Number: 77199930072  
 Status: Unutilized  
 Reason: Extensive deterioration  
 Bldg. 853  
 Naval Air Station, Whidbey Island  
 Oak Harbor Co: WA 98278–3500  
 Landholding Agency: Navy  
 Property Number: 77199930073  
 Status: Unutilized



Reason: Extensive deterioration  
Bldg. 854  
Naval Air Station, Whidbey Island  
Oak Harbor Co: WA 98278-3500  
Landholding Agency: Navy  
Property Number: 77199930074  
Status: Unutilized  
Reason: Extensive deterioration  
Bldg. 166  
Puget Sound Naval Shipyard  
Bremerton Co: WA 98314-5000  
Landholding Agency: Navy  
Property Number: 77199930101  
Status: Excess  
Reason: Secured Area  
Bldg. 287  
Puget Sound Naval Shipyard  
Bremerton Co: WA 98314-5000  
Landholding Agency: Navy  
Property Number: 77199930102  
Status: Excess  
Reason: Secured Area  
Bldg. 418  
Puget Sound Naval Shipyard  
Bremerton Co: WA 98314-5000  
Landholding Agency: Navy  
Property Number: 77199930103  
Status: Excess  
Reason: Secured Area  
Bldg. 858  
Puget Sound Naval Shipyard  
Bremerton Co: WA 98314-5000  
Landholding Agency: Navy  
Property Number: 77199930104  
Status: Excess  
Reason: Secured Area  
Bldg. 17  
Naval Radio Station  
Jim Creek  
Arlington Co: WA 98223-8599  
Landholding Agency: Navy  
Property Number: 77200010073  
Status: Excess  
Reasons: Secured Area, Extensive deterioration  
Bldg. 47  
Naval Undersea Warfare  
Keyport Co: Kitsap WA 98345-7610  
Landholding Agency: Navy  
Property Number: 77200010074  
Status: Unutilized  
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area  
Whitney Point Complex  
Brinnon Co: Jefferson WA 98320-9899  
Landholding Agency: Navy  
Property Number: 77200010102  
Status: Excess  
Reason: Extensive deterioration  
Bldg. 398  
Naval Station  
Bremerton Co: WA 98314-5000  
Landholding Agency: Navy  
Property Number: 77200020038  
Status: Unutilized  
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area  
Bldg. 976  
Naval Station  
Bremerton Co: WA 98314-5020  
Landholding Agency: Navy  
Property Number: 77200020039  
Status: Unutilized

Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration  
8 Bldgs.  
Naval Station 902, 903, 905, 907, 909-911, 915  
Bremerton Co: WA 98314-5020  
Landholding Agency: Navy  
Property Number: 77200020040  
Status: Unutilized  
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area  
Bldg. 109  
Naval Weapons Station  
Port Hadlock Co: Jefferson WA 98339-9723  
Landholding Agency: Navy  
Property Number: 77200030020  
Status: Unutilized  
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration  
Bldg. 157  
Naval Weapons Station  
Port Hadlock Co: Jefferson WA 98339-9723  
Landholding Agency: Navy  
Property Number: 77200030021  
Status: Unutilized  
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration  
Bldg. 161  
Naval Weapons Station  
Port Hadlock Co: Jefferson WA 98339-9723  
Landholding Agency: Navy  
Property Number: 77200030022  
Status: Unutilized  
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration  
Bldg. 170  
Naval Weapons Station  
Port Hadlock Co: Jefferson WA 98339-9723  
Landholding Agency: Navy  
Property Number: 77200030023  
Status: Unutilized  
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration  
Bldg. 262  
Naval Weapons Station  
Port Hadlock Co: Jefferson WA 98339-9723  
Landholding Agency: Navy  
Property Number: 77200030024  
Status: Unutilized  
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration  
Bldg. 482  
Puget Sound Naval Shipyard  
Bremerton Co: WA 98314-5000  
Landholding Agency: Navy  
Property Number: 77200040019  
Status: Excess  
Reason: Secured Area  
Bldg. 529  
Puget Sound Naval Shipyard  
Bremerton Co: WA 98314-5000  
Landholding Agency: Navy  
Property Number: 77200040020  
Status: Excess  
Reason: Secured Area  
Bldg. 133  
Naval Undersea Warfare Station  
Keyport Co: Kitsap WA 98345-7610

Landholding Agency: Navy  
Property Number: 77200120133  
Status: Unutilized  
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration  
Bldg. 2511  
NAS Whidbey Island  
Oak Harbor Co: Island WA 98278-3500  
Landholding Agency: Navy  
Property Number: 77200120157  
Status: Excess  
Reason: Secured Area  
Bldg. 98  
Naval Air Station  
Oak Harbor Co: Whidbey Island WA 98278-  
Landholding Agency: Navy  
Property Number: 77200220022  
Status: Unutilized  
Reasons: Within 2000 ft. of flammable or explosive material, Floodway, Extensive deterioration  
Bldg. 2667  
Naval Air Station  
Oak Harbor Co: Whidbey Island WA 98278-  
Landholding Agency: Navy  
Property Number: 77200220023  
Status: Unutilized  
Reasons: Within 2000 ft. of flammable or explosive material, Floodway, Extensive deterioration  
Bldg. 899  
Puget Sound Naval Shipyard  
Bremerton Co: WA 98314-5000  
Landholding Agency: Navy  
Property Number: 77200230032  
Status: Unutilized  
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area  
Bldgs. 935, 936, 956, 957  
Naval Station  
Bremerton Co: WA 98314-5020  
Landholding Agency: Navy  
Property Number: 77200230041  
Status: Excess  
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area  
Bldg. 1990  
Naval Station  
Everett Co: Snohomish WA 98207-5001  
Landholding Agency: Navy  
Property Number: 77200230044  
Status: Excess  
Reasons: Secured Area, Extensive deterioration  
Bldg. 530  
Naval Station  
Bremerton Co: WA 98314-5020  
Landholding Agency: Navy  
Property Number: 77200230058  
Status: Excess  
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area  
Bldg. 878  
Naval Station  
Bremerton Co: WA 98314-5020  
Landholding Agency: Navy  
Property Number: 77200230059  
Status: Excess  
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area  
Bldg. 904  
Naval Station  
Fort Lawton

Everett Co: Snohomish WA 98207-5001  
Landholding Agency: Navy  
Property Number: 77200230060  
Status: Excess  
Reason: Extensive deterioration  
Bldg. 66  
Naval Magazine  
Indian Island  
Port Hadlock Co: Jefferson WA 98339-9723  
Landholding Agency: Navy  
Property Number: 77200240032  
Status: Unutilized  
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration  
Bldg. 67  
Naval Magazine  
Indian Island  
Port Hadlock Co: Jefferson WA 98339-9723  
Landholding Agency: Navy  
Property Number: 77200240033  
Status: Unutilized  
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration  
Bldg. 180  
Naval Magazine  
Indian Island  
Port Hadlock Co: Jefferson WA 98339-9723  
Landholding Agency: Navy  
Property Number: 77200240034  
Status: Unutilized  
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration  
Bldg. 182  
Naval Magazine  
Indian Island  
Port Hadlock Co: Jefferson WA 98339-9723  
Landholding Agency: Navy  
Property Number: 77200240035  
Status: Unutilized  
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration  
Bldg. 214  
Naval Magazine Indian Island  
Port Hadlock Co: Jefferson WA 98339-9723  
Landholding Agency: Navy  
Property Number: 77200240036  
Status: Unutilized  
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration  
Bldg. 273  
Naval Magazine  
Indian Island  
Port Hadlock Co: Jefferson WA 98339-9723  
Landholding Agency: Navy  
Property Number: 77200240037  
Status: Unutilized  
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration  
Bldg. 937  
Naval Undersea Warfare  
Keyport Co: Kitsap WA 98345-7610  
Landholding Agency: Navy  
Property Number: 77200240038  
Status: Unutilized  
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area  
Bldg. 2801A  
Naval Undersea Warfare

Keyport Co: Kitsap WA 98345-7610  
Landholding Agency: Navy  
Property Number: 77200240039  
Status: Unutilized  
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area  
Bldg. 7634  
Naval Undersea Warfare  
Keyport Co: Kitsap WA 98345-7610  
Landholding Agency: Navy  
Property Number: 77200240040  
Status: Unutilized  
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area  
Bldg. 2633  
Naval Air Station  
Oak Harbor Co: Island WA 98278-  
Landholding Agency: Navy  
Property Number: 77200340052  
Status: Excess  
Reason: Extensive deterioration  
West Virginia  
Radio Transmitter Rcv Site  
Greenbrier Street  
Charleston Co: WV 25311-  
Landholding Agency: GSA  
Property Number: 54200340011  
Status: Excess  
Reason: Within 2000 ft. of flammable or explosive material  
GSA Number : 4-U-WV-0547

#### Land (by State)

California  
Space Surv. Field Station  
Portion/Off Heritage Road  
San Diego CA 90012-1408  
Landholding Agency: Navy  
Property Number: 77199820049  
Status: Excess  
Reason: Within 2000 ft. of flammable or explosive material  
Colorado  
Landfill  
48th & Holly Streets  
Commerce Co: Adams CO 80022-  
Landholding Agency: GSA  
Property Number: 54200220006  
Status: Surplus  
Reasons: Within 2000 ft. of flammable or explosive material contamination  
GSA Number: 7-Z-CO-0647  
Florida  
3 parcels  
U.S. Customs Svc Natl Law  
Enforcement Comm Ctr  
Orlando Co: Orange FL 32803-  
Landholding Agency: GSA  
Property Number: 54200310015  
Status: Excess  
Reason: landlocked  
GSA Number: 4-T-FL-1209-1A  
Navy Site Alpha  
Homestead Co: Miami/Dade FL  
Landholding Agency: GSA  
Property Number: 54200330009  
Status: Surplus  
Reason: flooding  
GSA Number: 4-N-FL-1079  
Kentucky  
Ferry Access Site  
Route 130  
Uniontown Co: KY 42461-

Landholding Agency: GSA  
Property Number: 54200340007  
Status: Excess  
Reason: Floodway  
GSA Number: 4-D-KY-0612  
Maryland  
Land/10,000 sq. ft.  
Indian Head Division  
Indian Head Co: Charles MD 20646-  
Landholding Agency: Navy  
Property Number: 77200330044  
Status: Underutilized  
Reason: Secured Area  
Michigan  
Port/EPA Large Lakes Rsch Lab  
Grosse Ile Twp Co: Wayne MI  
Landholding Agency: GSA  
Property Number: 54199720022  
Status: Excess  
Reason: Within airport runway clear zone  
GSA Number: 1-Z-MI-554-A  
Land/USCG 1380 Beach Street  
Muskegon Co: MI 49441-  
Landholding Agency: GSA  
Property Number: 54200320014  
Status: Excess  
Reason: Within 2000 ft. of flammable or explosive material  
GSA Number: 1-U-MI-0610  
Minnesota  
Parcel A  
Twin Cities Army Ammunition Plant  
Arden Hills Co: MN 55112-3938  
Landholding Agency: GSA  
Property Number: 54200240014  
Status: Excess  
Reason: Within 2000 ft. of flammable or explosive material  
GSA Number: 1-D-MN-0578A  
Missouri  
Tracts 100-102  
Pattonsburg Lake Project  
Daviess Co: MO  
Landholding AGENCY: GSA  
Property Number: 54200410009  
Status: Surplus  
Reason: Inaccessible/flooding  
GSA Number: 7-D-MO-0608A  
Montana  
Silo's Airstrip  
Townsend Co: Broadwater MT 59644-  
Landholding Agency: GSA  
Property Number: 54200410010  
Status: Surplus  
Reason: Public airport  
GSA Number: 7-I-MO-04091B  
New Jersey  
2.1 acres  
Naval Weapons Station  
Earle Co: NJ  
Landholding Agency: Navy  
Property Number: 77200320016  
Status: Excess  
Reason: Secured Area  
North Carolina  
0.85 parcel of land  
Marine Corps Air Station, Cherry Point  
Havelock Co: Craven NC 28533-  
Landholding Agency: Navy  
Property Number: 77199740074  
Status: Unutilized

Reason: Secured Area  
5 (0.91) Parcels  
Marine Corps Base  
Camp Lejeune Co: NC  
Landholding Agency: Navy  
Property Number: 77200210080  
Status: Underutilized  
Reason: Secured Area

3 (0.91) Parcels  
Marine Corps Base  
Greater Sandy Run  
Camp Lejeune Co: NC—  
Landholding Agency: Navy  
Property Number: 77200210081  
Status: Underutilized  
Reasons: Within airport runway clear zone,  
Secured Area

Ohio  
Lewis Research Center  
Cedar Point Road  
Cleveland Co: Cuyahoga OH 44135—  
Landholding Agency: GSA  
Property Number: 54199610007  
Status: Excess  
Reasons: Within 2000 ft. of flammable or  
explosive material, Within airport runway  
clear zone  
GSA Number: 2—Z—OH—598—I

Puerto Rico  
Parcel 2E  
Naval Security Group  
Sabana Seca Co: Toa Baja PR  
Landholding Agency: GSA  
Property Number: 54200210024  
Status: Excess

Reason: Within 2000 ft. of flammable or  
explosive material  
GSA Number: 1—N—PR—496  
Parcel 2R  
Naval Security Group  
Sabana Seca Co: Toa Baja PR  
Landholding Agency: GSA  
Property Number: 54200210025  
Status: Excess  
Reason: Within 2000 ft. of flammable or  
explosive material  
GSA Number: 1—N—PR—494  
Parcel 2W  
Naval Security Group  
Sabana Seca Co: Toa Baja PR  
Landholding Agency: GSA  
Property Number: 54200210026  
Status: Excess  
Reason: Within 2000 ft. of flammable or  
explosive material  
GSA Number: 1—N—PR—495  
Site 1  
Naval Station Roosevelt Roads  
Ceiba Co: PR 00735—  
Landholding Agency: Navy  
Property Number: 77200320029  
Status: Unutilized  
Reason: Secured Area  
Site 2  
Naval Station Roosevelt Roads  
Ceiba Co: PR 00735—  
Landholding Agency: Navy  
Property Number: 77200320030  
Status: Unutilized  
Reason: Secured Area  
Site 3

Naval Station Roosevelt Roads  
Ceiba Co: PR 00735—  
Landholding Agency: Navy  
Property Number: 77200320031  
Status: Unutilized  
Reason: Secured Area

Site 4  
Naval Station Roosevelt Roads  
Ceiba Co: PR 00735—  
Landholding Agency: Navy  
Property Number: 77200320032  
Status: Unutilized  
Reason: Secured Area

South Dakota  
5 Former Launch Facilities  
Ellsworth AFB  
Meade Co: Butte SD  
Landholding Agency: GSA  
Property Number: 54200410011  
Status: Surplus  
Reason: launch facilities  
GSA Number: 7—D—SD—521

Washington  
Land-Port Hadlock Detachment  
Naval Ordnance Center Pacific Division  
Port Hadlock Co: Jefferson WA 98339—  
Landholding Agency: Navy  
Property Number: 77199640019  
Status: Underutilized  
Reasons: Within 2000 ft. of flammable or  
explosive material, Secured Area

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# Federal Register

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**Friday,  
March 5, 2004**

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## **Part IV**

## **Department of Transportation**

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**Federal Motor Carrier Safety  
Administration**

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**49 CFR Part 375  
Transportation of Household Goods;  
Consumer Protection Regulations; Interim  
Final Rule**

**DEPARTMENT OF TRANSPORTATION****Federal Motor Carrier Safety Administration****49 CFR Part 375****[Docket No. FMCSA-97-2979]****RIN 2126-AA32****Transportation of Household Goods; Consumer Protection Regulations****AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.**ACTION:** Interim final rule; technical amendments.

**SUMMARY:** The Federal Motor Carrier Safety Administration (FMCSA) amends its interim final rule governing the interstate transportation of household goods (68 FR 35064, Jun. 11, 2003). On August 25, 2003, the U.S. Department of Transportation (DOT) received two petitions for reconsideration of the interim final rule. The petitioners requested both substantive and technical amendments. Today's rule incorporates the technical amendments. Substantive amendments requested by the petitioners will require consideration in a future rulemaking proceeding, to give the public an opportunity to comment. This amended interim final rule will benefit both the industry and consumers by more accurately reflecting current industry practices.

**DATES:** The interim final rule (68 FR 35064) issued on June 11, 2003, was effective September 9, 2003; these technical amendments are effective April 5, 2004. The compliance date for the interim rule was delayed at 68 FR 56208 (September 30, 2003); the new compliance date for the interim rule and these amendments is April 5, 2004.

**FOR FURTHER INFORMATION CONTACT:** Mr. Nathaniel Jackson, Office of Commercial Enforcement, (202) 385-2369, Federal Motor Carrier Safety Administration, Suite 600, 400 Virginia Avenue, SW., Washington, DC 20024. *Docket:* For access to the docket to read background documents or comments received, go to <http://dms.dot.gov> at any time or to Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. *Privacy Act:* Anyone is able to search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's

complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477). This statement is also available at <http://dms.dot.gov>.

**SUPPLEMENTARY INFORMATION:****Background**

In the Motor Carrier Safety Improvement Act of 1999 (Pub. L. 106-159, December 9, 1999, 113 Stat. 1749), which established FMCSA as a separate agency within DOT, Congress authorized the agency to regulate motor carriers transporting household goods for individual shippers. Our regulations setting forth Federal requirements for motor carriers that provide interstate transportation of household goods are found in 49 CFR part 375. The regulations governing payment of transportation charges are in 49 CFR part 377.

In May 1998, the Federal Highway Administration published a notice of proposed rulemaking (NPRM) requesting comments on its proposal to update the household goods regulations (63 FR 27126, May 15, 1998). The Federal Highway Administration is the predecessor agency to FMCSA within DOT.

The public submitted more than 50 comments to the NPRM. FMCSA subsequently modified the substance of the proposal in light of concerns raised by some of the commenters, and published an interim final rule in June 2003 (68 FR 35064, Jun. 11, 2003). We published an interim final rule rather than a final rule to allow the Office of Management and Budget (OMB) additional time to complete its review of information collection requirements.

In order to publish the rule text in the October 1, 2003, edition of the Code of Federal Regulations (CFR), we established the interim final rule's effective date as September 9, 2003. However, compliance was not required until March 1, 2004. On August 25, 2003, we received two petitions for reconsideration of the interim final rule. The petitioners are (1) the American Moving and Storage Association (the Association) and (2) United Van Lines, LLC and Mayflower Transit, LLC (Unigroup). On the same date, the Association submitted a separate Petition for Stay of Effective Date.

The reconsideration petitions address a variety of issues, both substantive and technical. On September 30, 2003, FMCSA delayed the compliance date for the rule indefinitely in order to consider fully the petitioners' concerns (68 FR 56208). The Association's petition noted that movers will require ample time to prepare for compliance with the rule. The compliance date for the interim

final rule and today's technical amendments provides the moving industry with this vital lead time.

Today's rule adopts all of the petitioners' requested technical amendments, either wholly or with minor modifications. These amendments provide uniformity between the rule text and the appendix, clarify certain provisions, reflect current industry practice, or correct typographical errors. Equally important, some of the technical amendments revise language that was contrary to the statutory intent of the ICC Termination Act of 1995 (ICCTA) (Pub. L. 104-88, 109 Stat. 803), as codified at 49 U.S.C. 14104 and 14708.

The substantive amendments requested by the petitioners involve changes to prescribed operating practices of movers. These changes would have a more significant impact on the moving industry and consumers than the technical amendments being adopted today. We will consider certain of the requested substantive amendments in a future rulemaking, so that the public will have an opportunity to comment.

The interim final rule, together with these technical amendments, is intended to (1) increase the public's understanding of the regulations with which movers must comply, and (2) help individual shippers and the moving industry understand the roles and responsibilities of movers, brokers, and shippers, to prevent moving disputes. Individual shippers—substantial numbers of whom are either relocating for business reasons or retired—may use for-hire truck transportation services infrequently. Thus, these consumers may be poorly informed about the regulations with which movers must comply and have little understanding of how moving companies operate. Appendix A to part 375—the pamphlet *Your Rights and Responsibilities When You Move*—is intended to help individual shippers understand the regulations so that they can make informed decisions in selecting a mover and planning a satisfactory move. Section 375.213 requires movers to furnish the information in this appendix to prospective customers.

**Discussion of the Technical Amendments**

In what follows we summarize the more significant technical amendments requested by the petitioners and adopted in today's rule. Although we made all of the proposed technical amendments, our discussion omits typographical and certain other minor

changes. Technical deviations from the petitioners' recommendations are noted. The amendatory text of today's rule constitutes all changes to part 375 as published at 68 FR 35064 (Jun. 11, 2003) and in the October 1, 2003, edition of title 49 of the Code of Federal Regulations.

Our discussion of the technical amendments is organized by subject area as follows:

Arbitration Programs  
Credit  
Liability insurance coverage  
Notification options  
Pickup of shipments: bill of lading, order for service, inventory  
Collection of charges  
Presentation of freight bills  
Appendix A to Part 375—Your Rights and Responsibilities When You Move

- Subpart A—General Requirements
- Subpart B—Before requesting services from any mover
- Subpart E—Pickup of My Shipment of Household Goods
- Subpart H—Collection of Charges
- Revisions for Consistency With Amendments to Part 375
- Amending “cubic yards or meters” to “cubic feet (or yards or meters)” (Subparts C and E)

Continued Applicability to Foreign Commerce

#### Arbitration Programs

We amended the first sentence of § 375.211(a), subpart B (“You must have an arbitration program for individual shippers.”). The amended regulation reads: “You must have an arbitration program to resolve property loss and damage disputes for individual shippers.” This achieves consistency with 49 U.S.C. 14708(a), which requires movers to provide arbitration *only* for loss and damage disputes. We agree with the petitioners that the regulation should require no more than the statute.

In § 375.211(a)(2), “\* \* \* your arbitration program must provide notice to the individual shipper of the availability of neutral arbitration \* \* \*”, we replaced “your arbitration program” with “you.” This is consistent with 49 U.S.C. 14708(b)(2), which clearly requires that the carrier, not its arbitration program, provide such notice.

Section 375.211(a)(2) is further amended by replacing “Before the household goods are tendered for transport,” with “Before execution of the order for service,” to require that movers furnish shippers with information about the availability of neutral arbitration before drawing up the contract. This also achieves internal consistency with § 375.213 (“Before you execute an order for service for a shipment of household goods \* \* \*”).

#### Credit

In § 375.217(c)(1) of subpart B, we amended the requirement that movers arrange for the delivery of household goods “during the time your credit/ collection department is open \* \* \*” to: “only at a time when you can obtain authorization for the shipper’s credit card transaction.” This reflects real-world efficiency. Today’s drivers often have a telephone number to call for credit card authorizations 24 hours a day, 7 days a week.

#### Liability Insurance Coverage

Former paragraphs (c) through (h) of § 375.303, subpart C, are amended to clarify that a mover is not required to comply with these provisions unless it elects to sell liability insurance coverage. Former paragraphs § 375.303(c) through (h) are renumbered as (c)(1) through (6), and the introductory clause “If you sell, offer to sell, or procure liability insurance coverage for loss or damage to shipments:” is added at § 373.303(c).

#### Notification Options

The petitioners noted that §§ 375.403(a)(7) and 375.405(b)(9) permit the mover only one method—fax transmission— of notifying individual shippers of additional services the mover proposes to perform. The petitioners requested that the regulation give movers the option of notifying shippers of additional services electronically. The petitioners also pointed out the advantages of standardizing notification options in part 375.

We agree that the notification options should be as similar as possible throughout part 375. However, telephone notification is inappropriate when written transaction is required—for example, when the mover must provide the shipper a statement of additional services needed (§ 375.405(b)(9)). We amended § 375.403(a)(7) (under “How must I provide a binding estimate?”), § 375.405(b)(9) (under “How must I provide a non-binding estimate?”), § 375.501(a)(15) (under “Must I write up an order for service?”), § 375.505(b)(5) (under “Must I write up a bill of lading?”), § 375.515(b) (under “May an individual shipper waive his or her right to observe each weighing?”), § 375.521(a) (under “What must I do if an individual shipper wants to know the actual weight or charges for a shipment before I tender delivery?”), § 375.605(a) (under “How must I notify an individual shipper of any service delays?”), and § 375.609(d) (under

“What must I do for shippers who store household goods in transit?”) so that each of these regulations provides the widest variety of notification options (telephone, in-person contact, fax transmission; e-mail; overnight courier; or certified mail, return receipt requested) appropriate to the matter being communicated. This allows the industry and individual shippers the greatest flexibility possible.

#### Pickup of Shipments: Bill of Lading, Order for Service, Inventory

The petitioners requested several amendments to regulations governing the bill of lading, inventory, and order for service, particularly in relation to pickup of shipments. We amended §§ 375.501, 375.503, and 375.505 to more accurately reflect movers’ current practices, as summarized below:

We removed the prohibition in § 375.501(d) against a mover’s requiring the shipper “to sign any incomplete \* \* \* documents pertaining to the move.” As the petitioners note, the bill of lading is seldom complete when a shipment leaves its origin. There are two reasons for this. Weighing cannot occur until the shipment is in transit, and other charges for service, such as unpacking, storage-in-transit, and various destination charges, cannot be determined until the shipment reaches its destination. If the bill of lading contains all relevant shipping information, except the actual shipment weight and any other information necessary to determine the final charges, the shipper will need to sign it at origin in order to choose the valuation option, request special services, and/or acknowledge the terms and conditions of released valuation.

Therefore, we amended § 375.501(d)(2) as follows: “You may require the individual shipper to sign an incomplete document at origin provided it contains all relevant shipping information except the actual shipment weight and any other information necessary to determine the final charges for all services performed.”

In addition, we amended § 375.505(a) by revising the sentence “You must furnish a complete copy of the bill of lading to the individual shipper \* \* \*” to read: “You must furnish a partially complete copy \* \* \*.”

The petitioners note that movers have discretion under the Surface Transportation Board’s Released Rates Order to place the valuation statement on either the order for service or the bill of lading, provided the order for service or bill of lading states the appropriate valuation selected by the shipper. We

amended §§ 375.501 and 375.505 to make this clear.

Specifically, in §§ 375.501 and 375.505, we added identical paragraphs (h) and (e), respectively, as follows: “You have the option of placing the valuation statement on either the order for service or the bill of lading, provided the order for service or bill of lading states the appropriate valuation selected by the shipper.” This language allows the mover, if it chooses, to combine the bill of lading and order for service in a single document. This could help reduce the paper and administrative burden of implementing the new rules.

In addition, we amended § 375.505(b)(14) to make it clear that movers are not bound to provide the estimate, order for service, and inventory to the individual shipper as attachments to the bill of lading. The revised language specifies that the estimate, order for service, and inventory must be attached to the bill of lading, but *only* “[i]f not provided elsewhere to the shipper.”

The petitioners note that §§ 375.503 and 375.505 require movers to furnish the shipper a complete copy of the inventory and bill of lading, respectively, before the goods are loaded onto the vehicle. They point out that this requirement is overly restrictive and inconsistent with industry practice. Movers provide the inventory and bill of lading to individual shippers either before or at the time of loading the vehicle, as dictated by circumstances. Moreover, a requirement to provide a complete copy of the bill of lading before loading the shipper's goods contradicts what has historically been the purpose and effect of the bill of lading—to serve, among other things, as a receipt for articles accepted for transportation under the contract of carriage.

Therefore, we amended § 375.503(b) and (c) to require that the inventory be prepared and signed, and that a copy be provided to the shipper, “before or at the time of loading the shipment.” Further, in § 375.505(c), we amended the sentence “When you load the shipment upon a vehicle for transportation, the bill of lading must be in the possession of the driver responsible for the shipment.” The amended language reads: “Before the vehicle leaves the residence at origin, the bill of lading must be in the possession of the driver responsible for the shipment.”

#### *Collection of Charges (Subpart H, § 375.801)*

In the interim final rule published on June 11, 2003, subpart H applied only

to household goods shipments “subject to binding estimates.” This limited applicability has the effect of excluding shipments for which the mover gives a non-binding estimate. The petitioners recommend we broaden the applicability to all shipments of household goods that:

- (1) Entail a balance due freight or expense bill; or
- (2) Are transported on an extension of credit basis.

We agree that this change more accurately reflects industry practice, and have amended § 375.801 as requested.

#### *Presentation of Freight Bills*

The petitioners point out a significant typographical error in § 375.803. The sentence “You must present your freight or expense bill in accordance with § 377.205 \* \* \*.” should read “\* \* \* in accordance with § 375.807.” We have corrected this error as requested. This consolidates the household goods regulations into part 375.

#### *Appendix A to Part 375—Your Rights and Responsibilities When You Move*

##### *Subpart A—General Requirements*

(1) The introductory paragraph of Appendix A, Subpart A—*General Requirements*, states it is the customer's responsibility to understand his rights and remedies “when” problems arise. The Association believes the word “when” implies that problems are the rule rather than the exception. It requests that “when” be amended to “if.” While agreeing with the Association's basic point, we made a stylistic decision to amend “when problems arise” to “in case problems arise,” rather than “if problems arise.”

(2) “What Definitions Are Used in This Pamphlet?” At the petitioners' request, we amended several definitions in this section to improve clarity and reflect industry practice. The amended definitions are *accessorial (additional) services, appliance service by third party, flight charge, line haul charges, long carry, and storage-in-transit*. The new definition of storage-in-transit, for example, corrects misinformation concerning the circumstances in which storage-in-transit may occur, the responsibility for the added charges, and the storage period (the 180-day limit in the old definition is inaccurate).

##### *Subpart B—Before Requesting Services From Any Mover*

(1) “How Must My Mover Handle Complaints and Inquiries?” In the previous version of the pamphlet, the closing sentence suggests that

individual shippers “may want to test” a mover's complaint system “to see how it works for you.” The Association considers this advice an open invitation to prospective customers to make “practice” complaints, and believes such bogus complaints would hamper movers' efficiency in serving their actual customers. The Association requested we remove the sentence.

Although we recognize the Association's concerns, we also support the consumer's right to choose a mover that practices good customer service. Therefore, rather than removing the sentence, we instead amended it to read: “You may want to be certain that the system is in place.”

(2) “Do I Have the Right To Inspect My Mover's Tariffs (Schedule of Charges) Applicable to My Move?” The closing paragraph of this section indicates that a mover's tariff “may contain other provisions that apply to your move. Ask your mover what they might be.” We agree with the petitioners that prospective shippers should be encouraged to exercise their right to request public information, and have amended the final sentence by adding the clause “and request a copy.”

(3) “May My Mover Accept Charge or Credit Cards for Payment?” For consistency with the revision to § 375.217(c)(1), we amended the sentences “The mover must arrange with you for delivery during the time when the mover's credit or collection department is open \* \* \*.” The mover does not have to make these delivery arrangements with you when it has equipped its motor vehicle(s) with card transaction processing machines.” The amended language reads: “If your mover agrees to accept payment by charge or credit card, you must arrange with your mover for the delivery only at a time when your mover can obtain authorization for your credit card transaction.”

##### **Subpart E—Pickup of My Shipment of Household Goods**

In the previous version of the pamphlet, the last paragraph of the section “Should I Reach an Agreement With My Mover About Pickup and Delivery Times?” contained outdated information about “long carries” and “flight stair carries.” The petitioners point out that “long carries” and “flight stair carries” are no longer separate charges under the tariff most commonly used by movers. We amended the second sentence of this paragraph to read: “For example, because of restrictions trucks must follow at your new location, the mover may not be able



to take its truck down the street of your residence and may need to shuttle the shipment using another type of vehicle." As suggested by the petitioners, we also deleted the last sentence of the paragraph.

#### Subpart H—Collection of Charges

(1) In the section "How Must My Mover Present Its Freight or Expense Bill to Me?" (second paragraph), we amended "the rate per unit for each shipment" to "rate or charge per service performed." The Association pointed out that household goods tariffs do not ordinarily state rates in terms of definable units.

(2) In the section "Do I Have a Right To File a Claim To Recover Money for Property My Mover Lost or Damaged?" (second paragraph), we amended language that was contrary to the requirements of 49 U.S.C. 14708(d). The Association noted that the original language ("You have nine months following either the date of delivery, or the date when the shipment should have been delivered, to file a claim. \* \* \* If you fail to file a claim within nine months \* \* \* and later bring a legal action against the mover to recover the damage, you may not be able to recover your attorney fees even though you win the court action") was both incorrect and misleading. First, section 14708(d) is clear that recovery of attorney's fees in a court action by the shipper is contingent upon the shipper's submitting the claim to the carrier within 120 days, not 9 months. Second, except in rare cases, failure to submit a claim within 9 months bars recovery not merely of attorney's fees but of any fees whatsoever. We have rewritten this paragraph for clarity and accuracy:

You should file a claim as soon as possible. If you fail to file a claim within 9 months, your mover may not be required to accept your claim. If you institute a court action and win, you may be entitled to attorney's fees, but only in either of two circumstances. You may be entitled to attorney's fees if you submitted your claim to the carrier within 120 days after delivery, and a decision was not rendered through arbitration within the time required by law. You also may be entitled to attorney's fees if you submitted your claim to the carrier within 120 days after delivery, the court enforced an arbitration decision in your favor, and the time for the carrier to comply with the decision has passed.

#### Appendix A—Revisions for Consistency With Amendments to Part 375

For consistency with the amendments to part 375 in today's rule, we revised the corresponding sections of appendix A. These changes include:

(1) Revising subpart E—"Must my mover write up an order for service?"—to clarify that movers may require individual shippers to sign partially complete documents. The amended language reads:

Your mover should provide you with documents that are as complete as possible, and with all charges clearly identified. However, as a practical matter, your mover usually cannot give you a complete bill of lading before transporting your goods. This is both because the shipment cannot be weighed until it is in transit and because other charges for service, such as unpacking, storage-in-transit (SIT), and various destination charges, cannot be determined until the shipment reaches its destination.

Therefore, your mover can require you to sign a partially complete bill of lading if it contains all relevant information except the actual shipment weight and any other information necessary to determine the final charges for all service provided. Signing the bill of lading allows you to choose the valuation option, request special services, and/or acknowledge the terms and conditions of released valuation.

Your mover also may provide you, strictly for informational purposes, with blank or incomplete documents pertaining to the move.

(2) Revising subpart E, "Must my mover write up an inventory of the shipment?" (first paragraph), to clarify that the mover has latitude as to when to prepare the inventory and provide it to the shipper. The mover is required to do this *not* before loading the shipment, but instead "before or at the time of loading."

(3) Revising subpart H—*Collection of Charges* to clarify that this provision applies to all shipments that involve a balance due freight or expense bill or are shipped on credit.

(4) Amending the introductory section "Why Was I Given This Pamphlet?" for consistency with § 375.209. In the previous version of appendix A, the second paragraph of this section stated, "The mover will also furnish you with another booklet describing its procedure for handling your questions and complaints." Section 375.209, however, merely requires that the mover's complaint procedures be distributed to individual shippers in writing, not that they be contained in a separate booklet.

*Appendix A—Amending the words "cubic yards or meters" to "cubic feet (or yards or meters)"* to reflect industry practice. Movers routinely calculate volume in cubic feet, not cubic yards. This language appears in the appendix sections Subpart C—*Service Options Provided* ("What service options may my mover provide?") and Subpart E—*Pickup of My Shipment of Household Goods* ("Must my mover determine the weight of my shipment?").

#### Continued Applicability to Foreign Commerce

Section 375.101 ("Who must follow these regulations?") of the interim final rule published on June 11, 2003, limits the applicability of part 375 to "interstate commerce," whereas former § 375.1 specified that part 375 is applicable to both "interstate and foreign commerce." This apparent change in applicability was unintentional on our part. To avoid ambiguity, we have amended § 375.101 by cross-referencing the term "interstate commerce" to the definition of the same term in 49 CFR § 390.5. This makes it clear that FMCSA also regulates foreign motor carriers transporting household goods into or out of the United States.

#### Rulemaking Analyses and Notices

##### *Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures*

We have determined these amendments do not meet the criteria for a "significant regulatory action" as specified in Executive Order 12866 and within the meaning of DOT regulatory policies and procedures (44 FR 11034, Feb. 26, 1979). This document was not reviewed by the Office of Management and Budget.

##### *Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement and Fairness Act (Pub. L. 104–121), requires Federal agencies to analyze the impact of rulemakings on small entities, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

As noted in the *Regulatory Flexibility Act* section of the interim final rule published on June 11, 2003, this rule does not impose a significant economic impact on a substantial number of small entities. The original rule issued by the former Interstate Commerce Commission imposed paperwork requirements (creating, duplicating, and storing records, and practicing inventory control for those records) that were estimated at 785 hours for each entity (moving company). The interim final rule published on June 11, 2003, increased this time-and-cost burden by 458 hours, to an estimated total of 1,243 burden hours per entity.

Today's technical amendments do not increase the estimated burden hours for compliance with the household goods transportation regulations. The amendments respond to industry petitions, and make the interim final

rule more consistent with industry practice. Most entities, including small entities, already follow the principles, practices, and procedures captured in the technical amendments. Therefore, FMCSA certifies that these technical amendments will not have a significant impact on a substantial number of small entities.

#### *Executive Order 13132 (Federalism)*

The *Federalism* section in our interim final rule published on June 11, 2003, noted that the rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999 (64 FR 43255, Aug. 10, 1999). State Attorneys General and other State and local officials submitted comments to the May 1998 NPRM (63 FR 27126, May 15, 1998). We considered these comments in developing the interim final rule, and placed the comments in the rulemaking docket.

FMCSA certifies that the rule published on June 11, 2003, has federalism implications because it directly impacts the distribution of power and responsibilities among the various levels of government.

Federalism implications likewise attach to today's technical amendments.

We have submitted a federalism summary impact statement for the June 11, 2003, interim final rule to the Director of the Office of Management and Budget.

#### *Unfunded Mandates Reform Act of 1995*

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4; 2 U.S.C. 1532) requires each agency to assess the effects of its regulatory actions on State, local, and tribal governments and the private sector. Any agency promulgating a final rule likely to result in a Federal mandate requiring expenditures by a State, local, or tribal government or by the private sector of \$100 million or more in any one year must prepare a written statement incorporating various assessments, estimates, and descriptions that are delineated in the Act. FMCSA determined that the changes in the June 11, 2003, interim final rule will not have an impact of \$100 million or more in any one year. No significant additional impact is associated with today's technical amendments.

#### *Paperwork Reduction Act*

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501-3520), a

Federal agency must obtain approval from OMB for each collection of information it conducts, sponsors, or requires through regulations. FMCSA sought approval of the information collection requirements in the "Transportation of Household Goods; Consumer Protection Regulations" interim final rule published on June 11, 2003. On June 19, 2003, OMB assigned control number 2126-0025 to this information collection, and the approval expires on June 30, 2006.

OMB approved 600,000 annual responses, 4,370,037 annual burden hours, and an annual information collection burden of \$37,247,000. It also approved FMCSA form number MCSA-2P to be used as part of the information collection process.

The following table summarizes the approved burden hours of the existing interim final rule by correlating the information collection activities with the sections of part 375 CFR in which they appear. A detailed analysis of the burden hours can be found in the OMB Supporting Statement for this rule. The Supporting Statement and its attachments are in Docket No. FMCSA-97-2979.

Type of burden	Section	Hourly burden
Agency Agreements .....	375.205	19
Minimum Advertising Information Soliciting Prospective Individual Shippers .....	375.207	684
Complaint and Inquiry Handling .....	375.209	500,000
Arbitration Program Summary .....	375.211	8,000
Your Rights and Responsibilities When You Move Booklet .....	375.213	8,334
Selling Insurance Policies .....	375.303	100,000
Estimates—Binding .....	375.401	1,836,000
Estimates—Non-binding .....	375.401	1,224,000
Orders for Service .....	375.501	300,000
Inventory .....	375.503	0
Bills of Lading .....	375.505	300,000
Volume to Weight Conversions .....	375.507	4,000
Weight Tickets .....	375.519	42,000
Notifications of Reasonable Dispatch Service Delays .....	375.605	16,000
Delivery More Than 24 Hrs. Ahead of Time .....	375.607	1,000
Notification of Storage-in-Transit Liability Assignments .....	375.609	30,000
Total Approved Burden Hours for Information Collection .....		4,370,037

\* Making inventories was a usual and customary moving industry practice that FMCSA adopted on June 11, 2003, at the suggestion of the National Association of Consumer Agency Administrators and the American Moving and Storage Association. The PRA regulations at 5 CFR 1320.3(b)(2) allow FMCSA to calculate no burden when the agency demonstrates to OMB that the activity needed to comply with the specific regulation is usual and customary.

#### *National Environmental Policy Act*

The agency analyzed this rulemaking for purposes of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and has determined that this action does not have any effect on the quality of the environment.

#### *Executive Order 12630 (Taking of Private Property)*

This rule would not effect a taking of private property or otherwise have takings implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### *Executive Order 12372 (Intergovernmental Review)*

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

*Executive Order 13211 (Energy Supply, Distribution, or Use)*

We have analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. This action is not a significant energy action within the meaning of section 4(b) of the Executive Order because as a procedural action it is not economically significant and will not have a significant adverse effect on the supply, distribution, or use of energy.

*Executive Order 12988 (Civil Justice Reform)*

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

**List of Subjects in 49 CFR Part 375**

Advertising, Arbitration, Consumer protection, Freight, Highways and roads, Insurance, Motor carriers, Moving of household goods, Reporting and recordkeeping requirements.

■ For the reasons set out in the preamble, FMCSA amends 49 CFR part 375 as set forth below:

**PART 375—TRANSPORTATION OF HOUSEHOLD GOODS IN INTERSTATE COMMERCE; CONSUMER PROTECTION REGULATIONS**

■ 1. The authority citation for part 375 continues to read as follows:

**Authority:** 5 U.S.C. 553; 49 U.S.C. 13301, 13704, 13707, 14104, 14706; and 49 CFR 1.73.

■ 2. Revise § 375.101 to read as follows:

**§ 375.101 Who must follow these regulations?**

You, a for-hire motor carrier engaged in the interstate transportation of household goods, must follow these regulations when offering your services to individual shippers. You are subject to this part only when you transport household goods for individual shippers by motor vehicle in interstate commerce as defined in § 390.5 of this subchapter.

■ 3. Revise § 375.105 to read as follows:

**§ 375.105 What are the information collection requirements of this part?**

(a) The information collection requirements of this part have been reviewed by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB control number 2126-0025.

(b) The information collection requirements are found in the following sections: Section 375.205, Section 375.207, Section 375.209, Section 375.211, Section 375.213, Section 375.215, Section 375.217, Section 375.303, Section 375.401, Section 375.403, Section 375.405, Section 375.409, Section 375.501, Section 375.503, Section 375.505, Section 375.507, Section 375.515, Section 375.519, Section 375.521, Section 375.605, Section 375.607, Section 375.609, Section 375.803, Section 375.805, and Section 375.807.

■ 4. Amend § 375.211 to revise paragraphs (a), (a)(2), and (b) to read as follows:

**§ 375.211 Must I have an arbitration program?**

(a) You must have an arbitration program to resolve property loss and damage disputes for individual shippers. You must establish and maintain an arbitration program with the following 11 minimum elements:

- (1) \* \* \*
- (2) Before execution of the order for service, you must provide notice to the individual shipper of the availability of neutral arbitration, including all three of the following items:
  - (i) A summary of the arbitration procedure.
  - (ii) Any applicable costs.
  - (iii) A disclosure of the legal effects of election to use arbitration.

\* \* \* \* \*

(b) You must produce and distribute a concise, easy-to-read, accurate summary of your arbitration program, including the items in this section.

■ 5. Amend § 375.217 to revise paragraph (c)(1) to read as follows:

**§ 375.217 How must I collect charges upon delivery?**

\* \* \* \* \*

(c) \* \* \*

(1) If you agree to accept payment by charge or credit card, you must arrange with the individual shipper for the delivery only at a time when you can obtain authorization for the shipper's credit card transaction.

\* \* \* \* \*

■ 6. Revise § 375.303 to read as follows:

**§ 375.303 If I sell liability insurance coverage, what must I do?**

(a) You, your employee, or an agent may sell, offer to sell, or procure liability insurance coverage for loss or damage to shipments of any individual shipper only when the individual shipper releases the shipment for transportation at a value not exceeding

60 cents per pound (\$1.32 per kilogram) per article.

(b) You may offer, sell, or procure any type of insurance policy on behalf of the individual shipper covering loss or damage in excess of the specified carrier liability.

(c) If you sell, offer to sell, or procure liability insurance coverage for loss or damage to shipments:

(1) You must issue to the individual shipper a policy or other appropriate evidence of the insurance that the individual shipper purchased.

(2) You must provide a copy of the policy or other appropriate evidence to the individual shipper at the time you sell or procure the insurance.

(3) You must issue policies written in plain English.

(4) You must clearly specify the nature and extent of coverage under the policy.

(5) Your failure to issue a policy, or other appropriate evidence of insurance purchased, to an individual shipper will subject you to full liability for any claims to recover loss or damage attributed to you.

(6) You must provide in your tariff for the provision of selling, offering to sell, or procuring liability insurance coverage. The tariff must also provide for the base transportation charge, including your assumption of full liability for the value of the shipment. This would be in the event you fail to issue a policy or other appropriate evidence of insurance to the individual shipper at the time of purchase.

■ 7. Amend § 375.403 to revise paragraph (a)(7) to read as follows:

**§ 375.403 How must I provide a binding estimate?**

(a) \* \* \*

(7) If you believe additional services are necessary to properly service a shipment after the household goods are in transit, you must inform the individual shipper what the additional services are before performing those services. You must allow the shipper at least one hour to determine whether he or she wants the additional services performed. If the individual shipper agrees to pay for the additional services, you must execute a written attachment to be made an integral part of the bill of lading contract and have the individual shipper sign the written attachment. This may be done through fax transmissions; e-mail; overnight courier; or certified mail, return receipt requested. You must bill the individual shipper for the additional services after 30 days from delivery. If the individual shipper does not agree to pay the additional services, the carrier should

perform only those additional services as are required to complete the delivery, and bill the individual shipper for the additional services after 30 days from delivery.

\* \* \* \* \*

■ 8. Amend § 375.405 to revise paragraph (b)(9) to read as follows:

**§ 375.405 How must I provide a non-binding estimate?**

\* \* \* \* \*

(b) \* \* \*

(9) If you believe additional services are necessary to properly service a shipment after the household goods are in transit, you must inform the individual shipper what the additional services are before performing those services. You must allow the shipper at least one hour to determine whether he or she wants the additional services performed. If the individual shipper agrees to pay for the additional services, you must execute a written attachment to be made an integral part of the bill of lading contract and have the individual shipper sign the written attachment. This may be done through fax transmissions; e-mail; overnight courier; or certified mail, return receipt requested. You must bill the individual shipper for the additional services after 30 days from delivery. If the individual shipper does not agree to pay the additional services, the carrier should perform only those additional services as are required to complete the delivery, and bill the individual shipper for the additional services after 30 days from delivery.

\* \* \* \* \*

■ 9. Amend § 375.501 to revise paragraphs (a)(2), (a)(15), and (d)(2) and to add paragraph (h) to read as follows:

**§ 375.501 Must I write up an order for service?**

(a) \* \* \*

(2) The individual shipper's name, address, and, if available, telephone number(s).

\* \* \* \* \*

(15) Whether the individual shipper requests notification of the charges before delivery. The individual shipper must provide you with the fax number(s) or address(es) where you will transmit the notifications by fax transmission; e-mail; overnight courier; or certified mail, return receipt requested.

\* \* \* \* \*

(d) \* \* \*

(2) You may require the individual shipper to sign an incomplete document at origin provided it contains all relevant shipping information except

the actual shipment weight and any other information necessary to determine the final charges for all services performed.

\* \* \* \* \*

(h) You have the option of placing the valuation statement on either the order for service or the bill of lading, provided the order for service or bill of lading states the appropriate valuation selected by the shipper.

■ 10. Amend § 375.503 to revise paragraphs (b) and (c) to read as follows:

**§ 375.503 Must I write up an inventory?**

\* \* \* \* \*

(b) You must prepare the inventory before or at the time of loading in the vehicle for transportation in a manner that provides the individual shipper with the opportunity to observe and verify the accuracy of the inventory if he or she so requests.

(c) You must furnish a complete copy of the inventory to the individual shipper before or at the time of loading the shipment. A copy of the inventory, signed by both you and the individual shipper, must be provided to the shipper, together with a copy of the bill of lading, before or at the time you load the shipment.

\* \* \* \* \*

■ 11. Amend § 375.505 to revise paragraphs (a), (b)(5), (b)(14), and (c) and to add paragraph (e) to read as follows:

**§ 375.505 Must I write up a bill of lading?**

(a) You must issue a bill of lading. The bill of lading must contain the terms and conditions of the contract. A bill of lading may be combined with an order for service to include all the items required by § 375.501 of this subpart. You must furnish a partially complete copy of the bill of lading to the individual shipper before the vehicle leaves the residence at origin. The partially complete bill of lading must contain all relevant shipment information, except the actual shipment weight and any other information necessary to determine the final charges for all services performed.

(b) \* \* \*

(5) When you transport on a collect-on-delivery basis, the name, address, and if furnished, the telephone number, facsimile number, or e-mail address of a person to notify about the charges. The notification may also be made by overnight courier or certified mail, return receipt requested.

\* \* \* \* \*

(14) Each attachment to the bill of lading. Each attachment is an integral part of the bill of lading contract. If not provided elsewhere to the shipper, the

following three items must be added as an attachment to the bill of lading.

(i) The binding or non-binding estimate.

(ii) The order for service.

(iii) The inventory.

\* \* \* \* \*

(c) A copy of the bill of lading must accompany a shipment at all times while in your (or your agent's) possession. Before the vehicle leaves the residence of origin, the bill of lading must be in the possession of the driver responsible for the shipment.

\* \* \* \* \*

(e) You have the option of placing the valuation statement on either the order for service or the bill of lading, provided the order for service or bill of lading states the appropriate valuation selected by the shipper.

■ 12. Amend § 375.515 to revise paragraph (b) to read as follows:

**§ 375.515 May an individual shipper waive his or her right to observe each weighing?**

\* \* \* \* \*

(b) If an individual shipper elects not to observe a reweighing, the shipper must waive that right in writing. The individual shipper may send the waiver notification via fax transmission; e-mail; overnight courier; or certified mail, return receipt requested.

\* \* \* \* \*

■ 13. Amend § 375.521 to revise paragraph (a) to read as follows:

**§ 375.521 What must I do if an individual shipper wants to know the actual weight or charges for a shipment before I tender delivery?**

(a) If an individual shipper of a shipment being transported on a collect-on-delivery basis specifically requests notification of the actual weight or volume and charges on the shipment, you must comply with this request. This requirement is conditioned upon the individual shipper's supplying you with an address or telephone number where the individual shipper will receive the communication. You must make your notification by telephone; in person; fax transmissions; e-mail; overnight courier; or certified mail, return receipt requested.

\* \* \* \* \*

■ 14. Amend § 375.605 to revise paragraph (a) to read as follows:

**§ 375.605 How must I notify an individual shipper of any service delays?**

(a) When you are unable to perform either the pickup or delivery of a shipment on the dates or during the periods specified in the order for service and as soon as the delay becomes

apparent to you, you must notify the individual shipper of the delay, at your expense, in one of the following six ways:

- (1) By telephone.
- (2) In person.
- (3) Fax transmissions.
- (4) E-mail.
- (5) Overnight courier.
- (6) Certified mail, return receipt requested.

\* \* \* \* \*

■ 15. Amend § 375.609 to revise paragraph (d) to read as follows:

**§ 375.609 What must I do for shippers who store household goods in transit?**

\* \* \* \* \*

(d) You must notify the individual shipper by facsimile transmission; e-mail; overnight courier; or certified mail, return receipt requested.

\* \* \* \* \*

■ 16. Revise § 375.801 to read as follows:

**§ 375.801 What types of charges apply to subpart H?**

This subpart applies to all shipments of household goods that:

- (a) Entail a balance due freight or expense bill, or
- (b) Are transported on an extension of credit basis.

■ 17. Revise § 375.803 to read as follows:

**§ 375.803 How must I present my freight or expense bill?**

You must present your freight or expense bill in accordance with § 375.807 of this subpart.

■ 18. Revise Appendix A to Part 375 to read as follows:

**Appendix A to Part 375—Your Rights and Responsibilities When You Move**

You must furnish this document to prospective individual shippers as required by 49 CFR 375.213. The text as it appears in this appendix may be reprinted in a form and manner chosen by you, provided it complies with § 375.213(b)(2) and (b)(3). You are not required to italicize titles of sections.

**YOUR RIGHTS AND RESPONSIBILITIES WHEN YOU MOVE**

OMB No. 2126-0025.

**Furnished by Your Mover, as Required by Federal Law**

**Authority:** 49 U.S.C. 13301, 13704, 13707, and 14104; 49 CFR 1.73.

**What Is Included in This Pamphlet?**

In this pamphlet, you will find a discussion of each of these topics:

- Why Was I Given This Pamphlet?
- What Are the Most Important Points I Should Remember From This Pamphlet?
- What If I Have More Questions?

**Subpart A—General Requirements**

Who must follow the regulations?  
What definitions are used in this pamphlet?

**Subpart B—Before Requesting Services From Any Mover**

What is my mover's normal liability for loss or damage when my mover accepts goods from me?

What actions by me limit or reduce my mover's normal liability?

What are dangerous or hazardous materials that may limit or reduce my mover's normal liability?

May my mover have agents?

What items must be in my mover's advertisements?

How must my mover handle complaints and inquiries?

Do I have the right to inspect my mover's tariffs (schedules of charges) applicable to my move?

Must my mover have an arbitration program?

Must my mover inform me about my rights and responsibilities under Federal law?

What other information must my mover provide to me?

How must my mover collect charges?

May my mover collect charges upon delivery?

May my mover extend credit to me?

May my mover accept charge or credit cards for my payments?

**Subpart C—Service Options Provided**

What service options may my mover provide?

If my mover sells liability insurance coverage, what must my mover do?

**Subpart D—Estimating Charges**

Must my mover estimate the transportation and accessorial charges for my move?

How must my mover estimate charges under the regulations?

What payment arrangements must my mover have in place to secure delivery of my household goods shipment?

**Subpart E—Pickup of My Shipment of Household Goods**

Must my mover write up an order for service?

Must my mover write up an inventory of the shipment?

Must my mover write up a bill of lading?

Should I reach an agreement with my mover about pickup and delivery times?

Must my mover determine the weight of my shipment?

How must my mover determine the weight of my shipment?

What must my mover do if I want to know the actual weight or charges for my shipment before delivery?

**Subpart F—Transportation of My Shipment**

Must my mover transport the shipment in a timely manner?

What must my mover do if it is able to deliver my shipment more than 24 hours before I am able to accept delivery?

What must my mover do for me when I store household goods in transit?

**Subpart G—Delivery of My shipment**

May my mover ask me to sign a delivery receipt releasing it from liability?

What is the maximum collect-on-delivery amount my mover may demand I pay at the time of delivery?

If my shipment is transported on more than one vehicle, what charges may my mover collect at delivery?

If my shipment is partially or totally lost or destroyed, what charges may my mover collect at delivery?

How must my mover calculate the charges applicable to the shipment as delivered?

**Subpart H—Collection of Charges**

Does this subpart apply to most shipments?

How must my mover present its freight or expense bill to me?

If I forced my mover to relinquish a collect-on-delivery shipment before the payment of ALL charges, how must my mover collect the balance?

What actions may my mover take to collect from me the charges in its freight bill?

Do I have a right to file a claim to recover money for property my mover lost or damaged?

**Subpart I—Resolving Disputes With My Mover**

What may I do to resolve disputes with my mover?

**Why Was I Given This Pamphlet?**

The Federal Motor Carrier Safety Administration's (FMCSA) regulations protect consumers on interstate moves and define the rights and responsibilities of consumers and household goods carriers.

The household goods carrier (mover) gave you this booklet to provide information about your rights and responsibilities as an individual shipper of household goods. Your primary responsibility is to select a reputable household goods carrier, ensure that you understand the terms and conditions of the contract, and understand and pursue the remedies that are available to you in case problems arise. You should talk to your mover if you have further questions. The mover will also furnish you with additional written information describing its procedure for handling your questions and complaints. The additional written information will include a telephone number you can call to obtain additional information about your move.

**What Are the Most Important Points I Should Remember From This Pamphlet?**

1. Movers must give written estimates.
2. Movers may give binding estimates.

3. Non-binding estimates are not always accurate; actual charges may exceed the estimate.

4. If your mover provides you (or someone representing you) with any partially complete document for your signature, you should verify the document is as complete as possible before signing it. Make sure the document contains all relevant shipping information, except the actual shipment weight and any other information necessary to determine the final charges for all services performed.

5. You may request from your mover the availability of guaranteed pickup and delivery dates.

6. Be sure you understand the mover's responsibility for loss or damage, and request an explanation of the difference between valuation and actual insurance.

7. You have the right to be present each time your shipment is weighed.

8. You may request a reweigh of your shipment.

9. If you agree to move under a non-binding estimate, you should confirm with your mover—in writing—the method of payment at delivery as cash, certified check, cashier's check, money order, or credit card.

10. Movers must offer a dispute settlement program as an alternative means of settling loss or damage claims. Ask your mover for details.

11. You should ask the person you speak to whether he or she works for the actual mover or a household goods broker. A household goods broker only arranges for the transportation. A household goods broker must not represent itself as a mover. A household goods broker does not own trucks of its own. The broker is required to find an authorized mover to provide the transportation. You should know that a household goods broker generally has no authority to provide you an estimate on behalf of a specific mover. If a household goods broker provides you an estimate, it may not be binding on the actual mover and you may have to pay the actual charges the mover incurs. A household goods broker is not responsible for loss or damage.

12. You may request complaint information about movers from the Federal Motor Carrier Safety Administration under the Freedom of Information Act. You may be assessed a fee to obtain this information. See 49 CFR part 7 for the schedule of fees.

13. You should seek estimates from at least three different movers. You should not disclose any information to the different movers about their competitors, as it may affect the accuracy of their estimates.

#### What If I Have More Questions?

If this pamphlet does not answer all of your questions about your move, do not hesitate to ask your mover's representative who handled the arrangements for your move, the driver who transports your shipment, or the mover's main office for additional information.

#### Subpart A—General Requirements

The primary responsibility for your protection lies with you in selecting a reputable household goods carrier, ensuring

you understand the terms and conditions of your contract with your mover, and understanding and pursuing the remedies that are available to you in case problems arise.

#### Who Must Follow the Regulations?

The regulations inform motor carriers engaged in the interstate transportation of household goods (movers) what standards they must follow when offering services to you. You, an individual shipper, are not directly subject to the regulations. However, your mover may be required by the regulations to force you to pay on time. The regulations only apply to your mover when the mover transports your household goods by motor vehicle in interstate commerce—that is, when you are moving from one State to another. The regulations do not apply when your interstate move takes place within a single commercial zone. A commercial zone is roughly equivalent to the local metropolitan area of a city or town. For example, a move between Brooklyn, NY, and Hackensack, NJ, would be considered to be within the New York City commercial zone and would not be subject to these regulations. Commercial zones are defined in 49 CFR part 372.

#### What Definitions Are Used in This Pamphlet?

**Accessorial (Additional) Services**—These are services such as packing, appliance servicing, unpacking, or piano stair carries that you request to be performed (or that are necessary because of landlord requirements or other special circumstances). Charges for these services may be in addition to the line haul charges.

**Advanced Charges**—These are charges for services performed by someone other than the mover. A professional, craftsman, or other third party may perform these services at your request. The mover pays for these services and adds the charges to your bill of lading charges.

**Advertisement**—This is any communication to the public in connection with an offer or sale of any interstate household goods transportation service. This will include written or electronic database listings of your mover's name, address, and telephone number in an on-line database. This excludes listings of your mover's name, address, and telephone number in a telephone directory or similar publication. However, Yellow Pages advertising is included within the definition.

**Agent**—A local moving company authorized to act on behalf of a larger, national company.

**Appliance Service by Third Party**—The preparation of major electrical appliances to make them safe for shipment. Charges for these services may be in addition to the line haul charges.

**Bill of Lading**—The receipt for your goods and the contract for their transportation.

**Carrier**—The mover transporting your household goods.

**Cash on Delivery (COD)**—This means payment is required at the time of delivery at the destination residence (or warehouse).

**Certified Scale**—Any scale designed for weighing motor vehicles, including trailers or

semitrailers not attached to a tractor, and certified by an authorized scale inspection and licensing authority. A certified scale may also be a platform or warehouse type scale that is properly inspected and certified.

**Estimate, Binding**—This is an agreement made in advance with your mover. It guarantees the total cost of the move based upon the quantities and services shown on the estimate.

**Estimate, Non-Binding**—This is what your mover believes the cost will be, based upon the estimated weight of the shipment and the accessorial services requested. A non-binding estimate is not binding on the mover. The final charges will be based upon the actual weight of your shipment, the services provided, and the tariff provisions in effect.

**Expedited Service**—This is an agreement with the mover to perform transportation by a set date in exchange for charges based upon a higher minimum weight.

**Flight Charge**—A charge for carrying items up or down flights of stairs. Charges for these services may be in addition to the line haul charges.

**Guaranteed Pickup and Delivery Service**—An additional level of service featuring guaranteed dates of service. Your mover will provide reimbursement to you for delays. This premium service is often subject to minimum weight requirements.

**High Value Article**—These are items included in a shipment valued at more than \$100 per pound (\$220 per kilogram).

**Household Goods**, as used in connection with transportation, means the personal effects or property used, or to be used, in a dwelling, when part of the equipment or supplies of the dwelling. Transportation of the household goods must be arranged and paid for by you or by another individual on your behalf. This may include items moving from a factory or store when you purchase them to use in your dwelling. You must request that these items be transported, and you (or another individual on your behalf) must pay the transportation charges to the mover.

**Inventory**—The detailed descriptive list of your household goods showing the number and condition of each item.

**Line Haul Charges**—The charges for the vehicle transportation portion of your move. These charges, if separately stated, apply in addition to the accessorial service charges.

**Long Carry**—A charge for carrying articles excessive distances between the mover's vehicle and your residence. Charges for these services may be in addition to the line haul charges.

**May**—An option. You or your mover may do something, but it is not a requirement.

**Mover**—A motor carrier engaged in the transportation of household goods and its household goods agents.

**Must**—A legal obligation. You or your mover must do something.

**Order for Service**—The document authorizing the mover to transport your household goods.

**Order (Bill of Lading) Number**—The number used to identify and track your shipment.

**Peak Season Rates**—Higher line haul charges applicable during the summer months.

**Pickup and Delivery Charges**—Separate transportation charges applicable for transporting your shipment between the storage-in-transit warehouse and your residence.

**Reasonable Dispatch**—The performance of transportation on the dates, or during the period of time, agreed upon by you and your mover and shown on the Order for Service/Bill of Lading. For example, if your mover deliberately withholds any shipment from delivery after you offer to pay the binding estimate or 110 percent of a non-binding estimate, your mover has not transported the goods with reasonable dispatch. The term "reasonable dispatch" excludes transportation provided under your mover's tariff provisions requiring guaranteed service dates. Your mover will have the defense of force majeure, *i.e.*, that the contract cannot be performed owing to causes that are outside the control of the parties and that could not be avoided by exercise of due care.

**Should**—A recommendation. We recommend you or your mover do something, but it is not a requirement.

**Shuttle Service**—The use of a smaller vehicle to provide service to residences not accessible to the mover's normal line haul vehicles.

**Storage-In-Transit (SIT)**—The temporary warehouse storage of your shipment pending further transportation, with or without notification to you. If you (or someone representing you) cannot accept delivery on the agreed-upon date or within the agreed-upon time period (for example, because your home is not quite ready to occupy), your mover may place your shipment into SIT without notifying you. In those circumstances, you will be responsible for the added charges for SIT service, as well as the warehouse handling and final delivery charges.

However, your mover also may place your shipment into SIT if your mover was able to make delivery before the agreed-upon date (or before the first day of the agreed-upon delivery period), but you did not concur with early delivery. In those circumstances, your mover must notify you immediately of the SIT, and your mover is fully responsible for redelivery charges, handling charges, and storage charges.

**Surface Transportation Board**—An agency within the U.S. Department of Transportation that regulates household goods carrier tariffs, among other responsibilities. The Surface Transportation Board's address is 1925 K Street, NW., Washington, DC 20423-0001 Tele. 202-565-1674.

**Tariff**—An issuance (in whole or in part) containing rates, rules, regulations, classifications, or other provisions. The Surface Transportation Board requires that a tariff contain three specific items. First, an accurate description of the services the mover offers to the public. Second, the specific applicable rates (or the basis for calculating the specific applicable rates) and service terms for services offered to the public. Third, the mover's tariff must be arranged in a way that allows you to determine the exact rate(s) and service terms applicable to your shipment.

**Valuation**—The degree of worth of the shipment. The valuation charge compensates

the mover for assuming a greater degree of liability than is provided for in its base transportation charges.

**Warehouse Handling**—A charge may be applicable each time SIT service is provided. Charges for these services may be in addition to the line haul charges. This charge compensates the mover for the physical placement and removal of items within the warehouse.

**We, Us, and Our**—The Federal Motor Carrier Safety Administration (FMCSA).

**You and Your**—You are an individual shipper of household goods. You are a consignor or consignee of a household goods shipment and your mover identifies you as such in the bill of lading contract. You own the goods being transported and pay the transportation charges to the mover.

**Where may other terms used in this pamphlet be defined?** You may find other terms used in this pamphlet defined in 49 U.S.C. 13102. The statute controls the definitions in this pamphlet. If terms are used in this pamphlet and the terms are defined neither here nor in 49 U.S.C. 13102, the terms will have the ordinary practical meaning of such terms.

## Subpart B—Before Requesting Services From Any Mover

### What Is My Mover's Normal Liability for Loss or Damage When My Mover Accepts Goods From Me?

In general, your mover is legally liable for loss or damage that occurs during performance of any transportation of household goods and of all related services identified on your mover's lawful bill of lading.

Your mover is liable for loss of, or damage to, any household goods to the extent provided in the current Surface Transportation Board's Released Rates Order. You may obtain a copy of the current Released Rates Order by contacting the Surface Transportation Board at the address provided under the definition of the Surface Transportation Board. The rate may be increased annually by your mover based on the U.S. Department of Commerce's Cost of Living Adjustment. Your mover may have additional liability if your mover sells liability insurance to you.

All moving companies are required to assume liability for the value of the goods transported. However, there are different levels of liability, and you should be aware of the amount of protection provided and the charges for each option.

Basically, most movers offer two different levels of liability (options 1 and 2 below) under the terms of their tariffs and the Surface Transportation Board's Released Rates Orders. These orders govern the moving industry.

#### Option 1: Released Value

This is the most economical protection option available. This no-additional-cost option provides minimal protection. Under this option, the mover assumes liability for no more than 60 cents per pound (\$1.32 cents per kilogram), per article. Loss or damage claims are settled based upon the pound

(kilogram) weight of the article multiplied by 60 cents per pound (\$1.32 cents per kilogram). For example, if your mover lost or destroyed a 10-pound (4.54-kilogram) stereo component valued at \$1,000, your mover would be liable for no more than \$6.00. Obviously, you should think carefully before agreeing to such an arrangement. There is no extra charge for this minimal protection, but you must sign a specific statement on the bill of lading agreeing to it.

#### Option 2: Full Value Protection (FVP)

Under this option, the mover is liable for the replacement value of lost or damaged goods (as long as it doesn't exceed the total declared value of the shipment). If you elect to purchase full value protection, and your mover loses, damages or destroys your articles, your mover must repair, replace with like items, or settle in cash at the current market replacement value, regardless of the age of the lost or damaged item. The minimum declared value of a shipment under this option is \$5,000 or \$4.00 times the actual total weight (in pounds) of the shipment, whichever is greater. For example, the minimum declared value for a 4,000-pound (1,814.4-kilogram) shipment would be \$16,000. Your mover may offer you FVP with a \$250 or \$500 deductible, or with no deductible at all. The amount of the deductible will affect the cost of your FVP coverage. The \$4.00 per pound minimum valuation rate may be increased annually by your mover based on changes in the household furnishings element of the Consumer Price Index established by the U.S. Department of Labor's Bureau of Labor Statistics.

Unless you specifically agree to other arrangements, the mover must assume liability for the entire shipment based upon this option. The approximate cost for FVP is \$8.50 for each \$1,000 of declared value; however, it may vary by mover. In the example above, the valuation charge for a shipment valued at \$16,000 would be \$136.00. As noted above, this fee may be adjusted annually by your mover based on changes in the household furnishings element of the Consumer Price Index.

Under both of these liability options, movers are permitted to limit their liability for loss or damage to articles of extraordinary value, unless you specifically list these articles on the shipping documents. An article of extraordinary value is any item whose value exceeds \$100 per pound (\$220 per kilogram). Ask your mover for a complete explanation of this limitation before your move. It is your responsibility to study this provision carefully and make the necessary declaration.

These optional levels of liability are not insurance agreements governed by State insurance laws, but instead are authorized under Released Rates Orders of the Surface Transportation Board of the U.S. Department of Transportation.

In addition to these options, some movers may also offer to sell, or procure for you, separate liability insurance from a third-party insurance company when you release your shipment for transportation at the minimum released value of 60 cents per pound (\$1.32



per kilogram) per article (option 1). This is not valuation coverage governed by Federal law, but optional insurance regulated under State law. If you purchase this separate coverage and your mover is responsible for loss or damage, the mover is liable only for an amount not exceeding 60 cents per pound (\$1.32 per kilogram) per article, and the balance of the loss is recoverable from the insurance company up to the amount of insurance purchased. The mover's representative can advise you of the availability of such liability insurance, and the cost.

If you purchase liability insurance from or through your mover, the mover is required to issue a policy or other written record of the purchase and to provide you with a copy of the policy or other document at the time of purchase. If the mover fails to comply with this requirement, the mover becomes fully liable for any claim for loss or damage attributed to its negligence.

#### **What Actions by Me Limit or Reduce My Mover's Normal Liability?**

Your actions may limit or reduce your mover's normal liability under the following three circumstances:

(1) You include perishable, dangerous, or hazardous materials in your household goods without your mover's knowledge.

(2) You choose liability option 1 but ship household goods valued at more than 60 cents per pound (\$1.32 per kilogram) per article.

(3) You fail to notify your mover in writing of articles valued at more than \$100 per pound (\$220 per kilogram). (If you do notify your mover, you will be entitled to full recovery up to the declared value of the article or articles, not to exceed the declared value of the entire shipment.)

#### **What Are Dangerous or Hazardous Materials That May Limit or Reduce My Mover's Normal Liability?**

Federal law forbids you to ship hazardous materials in your household goods boxes or luggage without informing your mover. A violation can result in five years' imprisonment and penalties of \$250,000 or more (49 U.S.C. 5124). You could also lose or damage your household goods by fire, explosion, or contamination.

If you offer hazardous materials to your mover, you are considered a hazardous materials shipper and must comply with the hazardous materials requirements in 49 CFR parts 171, 172, and 173, including but not limited to package labeling and marking, shipping papers, and emergency response information. Your mover must comply with 49 CFR parts 171, 172, 173, and 177 as a hazardous materials carrier.

Hazardous materials include explosives, compressed gases, flammable liquids and solids, oxidizers, poisons, corrosives, and radioactive materials. Examples: Nail polish remover, paints, paint thinners, lighter fluid, gasoline, fireworks, oxygen bottles, propane cylinders, automotive repair and maintenance chemicals, and radio-pharmaceuticals.

There are special exceptions for small quantities (up to 70 ounces total) of

medicinal and toilet articles carried in your household goods and certain smoking materials carried on your person. For further information, contact your mover.

#### **May My Mover Have Agents?**

Yes, your mover may have agents. If your mover has agents, your mover must have written agreements with its prime agents. Your mover and its retained prime agent must sign their agreements. Copies of your mover's prime agent agreements must be in your mover's files for a period of at least 24 months following the date of termination of each agreement.

#### **What Items Must Be in My Mover's Advertisements?**

Your mover must publish and use only truthful, straightforward, and honest advertisements. Your mover must include certain information in all advertisements for all services (including any accessorial services incidental to or part of interstate transportation). Your mover must require each of its agents to include the same information in its advertisements. The information must include the following two pieces of information about your mover:

(1) Name or trade name of the mover under whose USDOT number the advertised service will originate.

(2) USDOT number, assigned by FMCSA, authorizing your mover to operate. Your mover must display the information as: USDOT No. (assigned number).

You should compare the name or trade name of the mover and its USDOT number to the name and USDOT number on the sides of the truck(s) that arrive at your residence. The names and numbers should be identical. If the names and numbers are not identical, you should ask your mover immediately why they are not. You should not allow the mover to load your household goods on its truck(s) until you obtain a satisfactory response from the mover's local agent. The discrepancies may warn of problems you will have later in your business dealings with this mover.

#### **How Must My Mover Handle Complaints and Inquiries?**

All movers are expected to respond promptly to complaints or inquiries from you, the customer. Should you have a complaint or question about your move, you should first attempt to obtain a satisfactory response from the mover's local agent, the sales representative who handled the arrangements for your move, or the driver assigned to your shipment.

If for any reason you are unable to obtain a satisfactory response from one of these persons, you should then contact the mover's principal office. When you make such a call, be sure to have available your copies of all documents relating to your move. *Particularly important is the number assigned to your shipment by your mover.*

Interstate movers are also required to offer neutral arbitration as a means of resolving consumer loss or damage disputes involving loss of or damage to household goods. Your mover is required to provide you with information regarding its arbitration program. You have the right to pursue court action under 49 U.S.C. 14704 to seek judicial

redress directly rather than participate in your mover's arbitration program.

All interstate moving companies are required to maintain a complaint and inquiry procedure to assist their customers. At the time you make the arrangements for your move, you should ask the mover's representative for a description of the mover's procedure, the telephone number to be used to contact the mover, and whether the mover will pay for such telephone calls. Your mover's procedure must include the following four things:

(1) A communications system allowing you to communicate with your mover's principal place of business by telephone.

(2) A telephone number.

(3) A clear and concise statement about who must pay for complaint and inquiry telephone calls.

(4) A written or electronic record system for recording all inquiries and complaints received from you by any means of communication.

Your mover must give you a clear and concise written description of its procedure. You may want to be certain that the system is in place.

#### **Do I Have the Right to Inspect My Mover's Tariffs (Schedules of Charges) Applicable to My Move?**

Federal law requires your mover to advise you of your right to inspect your mover's tariffs (its schedules of rates or charges) governing your shipment. Movers' tariffs are made a part of the contract of carriage (bill of lading) between you and the mover. You may inspect the tariff at the mover's facility, or, upon request, the mover will furnish you a free copy of any tariff provision containing the mover's rates, rules, or charges governing your shipment.

Tariffs may include provisions limiting the mover's liability. This would generally be described in a section on declaring value on the bill of lading. A second tariff provision may set the periods for filing claims. This would generally be described in Section 6 on the reverse side of a bill of lading. A third tariff provision may reserve your mover's right to assess additional charges for additional services performed. For non-binding estimates, another tariff provision may base charges upon the exact weight of the goods transported. Your mover's tariff may contain other provisions that apply to your move. Ask your mover what they might be, and request a copy.

#### **Must My Mover Have an Arbitration Program?**

Your mover must have an arbitration program for your use in resolving disputes concerning loss or damage to your household goods. You have the right not to participate in the arbitration program. You may pursue court action under 49 U.S.C. 14704 to seek judicial remedies directly. Your mover must establish and maintain an arbitration program with the following 11 minimum elements:

(1) The arbitration program offered to you must prevent your mover from having any special advantage because you live or work in a place distant from the mover's principal or other place of business.



(2) Before your household goods are tendered for transport, your mover must provide notice to you of the availability of neutral arbitration, including the following three things:

- (a) A summary of the arbitration procedure.
- (b) Any applicable costs.
- (c) A disclosure of the legal effects of electing to use arbitration.

(3) Upon your request, your mover must provide information and forms it considers necessary for initiating an action to resolve a dispute under arbitration.

(4) Each person authorized to arbitrate must be independent of the parties to the dispute and capable of resolving such disputes fairly and expeditiously. Your mover must ensure the arbitrator is authorized and able to obtain from you or your mover any material or relevant information to carry out a fair and expeditious decision-making process.

(5) You must not be required to pay more than one-half of the arbitration's cost. The arbitrator may determine the percentage of payment of the costs for each party in the arbitration decision, but must not make you pay more than half.

(6) Your mover must not require you to agree to use arbitration before a dispute arises.

(7) You will be bound by arbitration for claims of \$5,000 or less if you request arbitration.

(8) You will be bound by arbitration for claims of more than \$5,000 only if you request arbitration and your mover agrees to it.

(9) If you and your mover both agree, the arbitrator may provide for an oral presentation of a dispute by a party or representative of a party.

(10) The arbitrator must render a decision within 60 days of receipt of written notification of the dispute, and a decision by an arbitrator may include any remedies appropriate under the circumstances.

(11) The 60-day period may be extended for a reasonable period if you fail, or your mover fails, to provide information in a timely manner.

Your mover must produce and distribute a concise, easy-to-read, accurate summary of its arbitration program.

#### **Must My Mover Inform Me About My Rights and Responsibilities Under Federal Law?**

Yes, your mover must inform you about your rights and responsibilities under Federal law. Your mover must produce and distribute this document. It should be in the general order and contain the text of appendix A to 49 CFR part 375.

#### **What Other Information Must My Mover Provide Me?**

Before your mover executes an order for service for a shipment of household goods, your mover must furnish you with the following four documents:

- (1) The contents of appendix A, "Your Rights and Responsibilities When You Move"—this pamphlet.
- (2) A concise, easy-to-read, accurate summary of your mover's arbitration program.

(3) A notice of availability of the applicable sections of your mover's tariff for the estimate of charges, including an explanation that you may examine the tariff sections or have copies sent to you upon request.

(4) A concise, easy-to-read, accurate summary of your mover's customer complaint and inquiry handling procedures. Included in this summary must be the following two items:

- (a) The main telephone number you may use to communicate with your mover.
- (b) A clear and concise statement concerning who must pay for telephone calls.

Your mover may, at its discretion, provide additional information to you.

#### **How Must My Mover Collect Charges?**

Your mover must issue you an honest, truthful freight or expense bill for each shipment transported. Your mover's freight or expense bill must contain the following 19 items:

- (1) Name of the consignor.
- (2) Name of the consignees.
- (3) Date of the shipment.
- (4) Origin point.
- (5) Destination points.
- (6) Number of packages.
- (7) Description of the freight.
- (8) Weight of the freight (if applicable to the rating of the freight).
- (9) The volume of the freight (if applicable to the rating of the freight).
- (10) The measurement of the freight (if applicable to the rating of the freight).
- (11) Exact rate(s) assessed.
- (12) Disclosure of the actual rates, charges, and allowances for the transportation service, when your mover electronically presents or transmits freight or expense bills to you. These rates must be in accordance with the mover's applicable tariff.
- (13) An indication of whether adjustments may apply to the bill.
- (14) Total charges due and acceptable methods of payment.
- (15) The nature and amount of any special service charges.
- (16) The points where special services were rendered.
- (17) Route of movement and name of each mover participating in the transportation.
- (18) Transfer points where shipments moved.
- (19) Address where you must pay or address of bill issuer's principal place of business.

Your mover must present its freight or expense bill to you within 15 days of the date of delivery of a shipment at its destination. The computation of time excludes Saturdays, Sundays, and Federal holidays.

If your mover lacks sufficient information to compute its charges, your mover must present its freight bill for payment within 15 days of the date when sufficient information does become available.

#### **May My Mover Collect Charges Upon Delivery?**

Yes. Your mover must specify the form of payment acceptable at delivery when the mover prepares an estimate and order for service. The mover and its agents must honor the form of payment at delivery, except when

you mutually agree to a change in writing. The mover must also specify the same form of payment when it prepares your bill of lading, unless you agree to a change. See also "May my mover accept charge or credit cards for my payments?"

You must be prepared to pay 10 percent more than the estimated amount, if your goods are moving under a non-binding estimate. Every collect-on-delivery shipper must have available 110 percent of the estimate at the time of delivery.

#### **May My Mover Extend Credit to Me?**

Extending credit to you is not the same as accepting your charge or credit card(s) as payment. Your mover may extend credit to you in the amount of the tariff charges. If your mover extends credit to you, your mover becomes like a bank offering you a line of credit, whose size and interest rate are determined by your ability to pay its tariff charges within the credit period. Your mover must ensure you will pay its tariff charges within the credit period. Your mover may relinquish possession of freight before you pay its tariff charges, at its discretion.

The credit period must begin on the day following presentation of your mover's freight bill to you. Under Federal regulation, the standard credit period is 15 days, including Saturdays, Sundays, and Federal holidays, except your mover may establish its own standard credit period of up to 30 calendar days. Your mover may also establish a service charge for extending credit, including a minimum service charge. Your mover's service charge applies only when your payments are made after its established standard credit period. For example, if your mover's established standard credit period is less than the maximum 30-calendar-day period, your mover may extend credit including a service charge for the additional time up to the maximum 30-calendar-day period. If your mover extends such credit, you may elect to postpone payment, including the service charge, until the end of the extended credit period.

Your mover may establish additional service charges for payments made after the expiration of the 30-calendar-day period. If your mover establishes additional service charges, your mover must begin to compute service charges on the day following the last day of its standard credit period. If your mover establishes service charges, your mover must notify you about the following three things:

(1) The only purpose of the service charge is to prevent you from having free use of the mover's funds.

(2) The service charge encourages your prompt payment.

(3) Your failure to pay within the credit period will require your mover to determine whether you will comply with the Federal household goods transportation credit regulations in good faith in the future before extending credit again.

#### **May My Mover Accept Charge or Credit Cards for My Payments?**

Your mover may allow you to use a charge or credit card for payment of the freight charges. Your mover may accept charge or

credit cards whenever you ship with it under an agreement and tariff requiring payment by cash or cash equivalents. Cash equivalents are a certified check, money order, or cashier's check (a check that a financial institution—bank, credit union, savings and loan—draws upon itself and that is signed by an officer of the financial institution).

If your mover allows you to pay for a freight or expense bill by charge or credit card, your mover deems such a payment to be equivalent to payment by cash, certified check, or cashier's check. It must note in writing on the order for service and the bill of lading whether you may pay for the transportation and related services using a charge or credit card. You should ask your mover at the time the estimate is written whether it will accept charge or credit cards at delivery.

The mover must specify what charge or credit cards it will accept, such as American Express™, Discover™, MasterCard™, or Visa™. If your mover agrees to accept payment by charge or credit card, you must arrange with your mover for the delivery only at a time when your mover can obtain authorization for your credit card transaction.

If you cause a charge or credit card issuer to reverse a transaction, your mover may consider your action tantamount to forcing your mover to provide an involuntary extension of its credit.

### Subpart C—Service Options Provided

#### What Service Options May My Mover Provide?

Your mover may provide any service options it chooses. It is customary for movers to offer several price and service options.

The total cost of your move may increase if you want additional or special services. Before you agree to have your shipment moved under a bill of lading providing special service, you should have a clear understanding with your mover of what the additional cost will be. You should always consider whether other movers may provide the services you require without requiring you to pay the additional charges.

One service option is a *space reservation*. If you agree to have your shipment transported under a space reservation agreement, you will pay for a minimum number of cubic feet of space in the moving van regardless of how much space in the van your shipment actually occupies.

A second option is *expedited service*. This aids you if you must have your shipments transported on or between specific dates when the mover could not ordinarily agree to do so in its normal operations.

A third customary service option is *exclusive use of a vehicle*. If for any reason you desire or require that your shipment be moved by itself on the mover's truck or trailer, most movers will provide such service.

Another service option is *guaranteed service on or between agreed dates*. You enter into an agreement with the mover where the mover provides for your shipment to be picked up, transported to destination, and delivered on specific guaranteed dates. If the mover fails to provide the service as agreed,

you are entitled to be compensated at a predetermined amount or a daily rate (per diem) regardless of the expense you might actually have incurred as a result of the mover's failure to perform.

Before requesting or agreeing to any of these price and service options, be sure to ask the mover's representatives about the final costs you will pay.

#### *Transport of Shipments on Two or More Vehicles*

Although all movers try to move each shipment on one truck, it becomes necessary, at times, to divide a shipment among two or more trucks. This may occur if your mover has underestimated the cubic feet (meters) of space required for your shipment and it will not all fit on the first truck. Your mover will pick up the remainder, or "leave behind," on a second truck at a later time, and this part of your shipment may arrive at the destination later than the first truck. When this occurs, your transportation charges will be determined as if the entire shipment had moved on one truck.

If it is important for you to avoid this inconvenience of a "leave behind," be sure your estimate includes an accurate calculation of the cubic feet (meters) required for your shipment. Ask your estimator to use a "Table of Measurements" form in making this calculation. Consider asking for a binding estimate. A binding estimate is more likely to be conservative with regard to cubic feet (meters) than a non-binding estimate. If the mover offers space reservation service, consider purchasing this service for the necessary amount of space plus some margin for error. In any case, you would be prudent to "prioritize" your goods in advance of the move so the driver will load the more essential items on the first truck if some are left behind.

#### **If My Mover Sells Liability Insurance Coverage, What Must My Mover Do?**

If your mover provides the service of selling additional liability insurance, your mover must follow certain regulations.

Your mover, its employees, or its agents, may sell, offer to sell, or procure additional liability insurance coverage for you for loss or damage to your shipment if you release the shipment for transportation at a value not exceeding 60 cents per pound (\$1.32 per kilogram) per article.

Your mover may offer, sell, or procure any type of insurance policy covering loss or damage in excess of its specified liability.

Your mover must issue you a policy or other appropriate evidence of the insurance you purchased. Your mover must provide a copy of the policy or other appropriate evidence to you at the time your mover sells or procures the insurance. Your mover must issue policies written in plain English.

Your mover must clearly specify the nature and extent of coverage under the policy. Your mover's failure to issue you a policy, or other appropriate evidence of insurance you purchased, will subject your mover to full liability for any claims to recover loss or damage attributed to it.

Your mover's tariff must provide for liability insurance coverage. The tariff must

also provide for the base transportation charge, including its assumption of full liability for the value of the shipment. This would offer you a degree of protection in the event your mover fails to issue you a policy or other appropriate evidence of insurance at the time of purchase.

### Subpart D—Estimating Charges

#### **Must My Mover Estimate the Transportation and Accessorial Charges for My Move?**

We require your mover to prepare a written estimate on every shipment transported for you. You are entitled to a copy of the written estimate when your mover prepares it. Your mover must provide you a written estimate of all charges, including transportation, accessorial, and advance charges. Your mover's "rate quote" is not an estimate. You and your mover must sign the estimate of charges. Your mover must provide you with a dated copy of the estimate of charges at the time you sign the estimate.

You should be aware that if you receive an estimate from a household goods broker, the mover is not required to accept the estimate. Be sure to obtain a written estimate from the mover if a mover tells you orally that it will accept the broker's estimate.

Your mover must specify the form of payment the mover and its delivering agent will honor at delivery. Payment forms may include but are not limited to cash, certified check, money order, cashier's check, a specific charge card such as American Express™, a specific credit card such as Visa™, and your mover's own credit.

If your mover provides you with an estimate based on volume that will later be converted to a weight-based rate, the mover must provide you an explanation in writing of the formula used to calculate the conversion to weight. Your mover must specify that the final charges will be based on actual weight and services. Before loading your household goods, and upon mutual agreement between you and your mover, your mover may amend an estimate of charges. Your mover may not amend the estimate after loading the shipment.

A *binding estimate* is an agreement made in advance with your mover. It guarantees the total cost of the move based upon the quantities and services shown on your mover's estimate.

A *non-binding estimate* is what your mover believes the total cost will be for the move, based upon the estimated weight of the shipment and the accessorial services requested. A non-binding estimate is not binding on your mover. Your mover will base the final charges upon the actual weight of your shipment, the services provided, and its tariff provisions in effect. You must be prepared to pay 10 percent more than the estimated amount at delivery.

#### **How Must My Mover Estimate Charges Under the Regulations?**

##### *Binding Estimates*

Your mover may charge you for providing a binding estimate. The binding estimate must clearly describe the shipment and all services provided.

When you receive a binding estimate, you cannot be required to pay any more than the estimated amount at delivery. If you have requested the mover provide more services than those included in the estimate, the mover must not demand full payment for those added services at time of delivery. Instead, the mover must bill for those services later, as explained below. Such services might include destination charges that often are not known at origin (such as long carry charges, shuttle charges, or extra stair carry charges).

A binding estimate must be in writing, and a copy must be made available to you before you move.

If you agree to a binding estimate, you are responsible for paying the charges due by cash, certified check, money order, or cashier's check. The charges are due your mover at the time of delivery unless your mover agrees, before you move, to extend credit or to accept payment by a specific charge card such as American Express™ or a specific credit card such as Visa™. If you are unable to pay at the time the shipment is delivered, the mover may place your shipment in storage at your expense until you pay the charges.

Other requirements of binding estimates include the following eight elements:

(1) Your mover must retain a copy of each binding estimate as an attachment to the bill of lading.

(2) Your mover must clearly indicate upon each binding estimate's face that the estimate is binding upon you and your mover. Each binding estimate must also clearly indicate on its face that the charges shown are the charges to be assessed for only those services specifically identified in the estimate.

(3) Your mover must clearly describe binding estimate shipments and all services to be provided.

(4) If, before loading your shipment, your mover believes you are tendering additional household goods or are requiring additional services not identified in the binding estimate, and you and your mover cannot reach an agreement, your mover may refuse to service the shipment. If your mover agrees to service the shipment, your mover must do one of the following three things:

(a) Reaffirm the binding estimate.

(b) Negotiate a revised written binding estimate listing the additional household goods or services.

(c) Add an attachment to the contract, in writing, stating you both will consider the original binding estimate as a non-binding estimate. You should read more below. This may seriously affect how much you may pay for the entire move.

(5) Once your mover loads your shipment, your mover's failure to execute a new binding estimate or to agree with you to treat the original estimate as a non-binding estimate signifies it has reaffirmed the original binding estimate. Your mover may not collect more than the amount of the original binding estimate, except as provided in the next two paragraphs.

(6) Your mover may believe additional services are necessary to properly service your shipment after your household goods are in transit. Your mover must inform you

what the additional services are before performing them. Your mover must allow you at least one hour to determine whether you want the additional services performed. Such additional services include carrying your furniture up additional stairs or using an elevator. If these services do not appear on your mover's estimate, your mover must deliver your shipment and bill you later for the additional services.

If you agree to pay for the additional services, your mover must execute a written attachment to be made an integral part of the bill of lading and have you sign the written attachment. This may be done through fax transmissions. You will be billed for the additional services 30 days following the date of delivery.

(7) If you add additional services after your household goods are in transit, you will be billed for the additional services but only be expected to pay the full amount of the binding estimate to receive delivery. Thirty days after delivery, your mover must bill you for the balance of any remaining charges. For example, if your binding estimate shows total charges at delivery should be \$1,000 but your actual charges at destination are \$1,500, your mover must deliver the shipment upon payment of \$1,000. The mover must bill you for the remaining \$500 after 30 days from delivery.

(8) Failure of your mover to relinquish possession of a shipment upon your offer to pay the binding estimate amount constitutes your mover's failure to transport a shipment with "reasonable dispatch" and subjects your mover to cargo delay claims pursuant to 49 CFR part 370.

#### *Non-Binding Estimates*

Your mover is not permitted to charge you for giving a non-binding estimate.

A non-binding estimate is not a bid or contract. Your mover provides it to you to give you a general idea of the cost of the move, but it does not bind your mover to the estimated cost. You should expect the final cost to be more than the estimate. The actual cost will be in accordance with your mover's tariffs. Federal law requires your mover to collect the charges shown in its tariffs, regardless of what your mover writes in its non-binding estimates. That is why it is important to ask for copies of the mover's tariffs before deciding on a mover. The charges contained in movers' tariffs are essentially the same for the same weight shipment moving the same distance. If you obtain different non-binding estimates from different movers, you must pay only the amount specified in your mover's tariff. Therefore, a non-binding estimate may have no effect on the amount that you will ultimately have to pay.

You must be prepared to pay 10 percent more than the estimated amount at the time of delivery. Every collect-on-delivery shipper must have available 110 percent of the estimate at the time of delivery. If you order additional services from your mover after your goods are in transit, the mover will then bill you 30 days after delivery for any remaining charges.

Non-binding estimates must be in writing and clearly describe the shipment and all

services provided. Any time a mover provides such an estimate, the amount of the charges estimated must be on the order for service and bill of lading related to your shipment. When you are given a non-binding estimate, do not sign or accept the order for service or bill of lading unless the mover enters the amount estimated on each form it prepares.

Other requirements of non-binding estimates include the following nine elements:

(1) Your mover must provide reasonably accurate non-binding estimates based upon the estimated weight of the shipment and services required.

(2) Your mover must explain to you that all charges on shipments moved under non-binding estimates will be those appearing in your mover's tariffs applicable to the transportation. If your mover provides a non-binding estimate of approximate costs, your mover is not bound by such an estimate.

(3) Your mover must furnish non-binding estimates without charge and in writing to you.

(4) Your mover must retain a copy of each non-binding estimate as an attachment to the bill of lading.

(5) Your mover must clearly indicate on the face of a non-binding estimate that the estimate is not binding upon your mover and the charges shown are the approximate charges to be assessed for the services identified in the estimate.

(6) Your mover must clearly describe on the face of a non-binding estimate the entire shipment and all services to be provided.

(7) If, before loading your shipment, your mover believes you are tendering additional household goods or requiring additional services not identified in the non-binding estimate, and you and your mover cannot reach an agreement, your mover may refuse to service the shipment. If your mover agrees to service the shipment, your mover must do one of the following two things:

(a) Reaffirm the non-binding estimate.

(b) Negotiate a revised written non-binding estimate listing the additional household goods or services.

(8) Once your mover loads your shipment, your mover's failure to execute a new estimate signifies it has reaffirmed the original non-binding estimate. Your mover may not collect more than 110 percent of the amount of this estimate at destination.

(9) Your mover may believe additional services are necessary to properly service your shipment after your household goods are in transit. Your mover must inform you what the additional services are before performing them. Your mover must allow you at least one hour to determine whether you want the additional services performed. Such additional services include carrying your furniture up additional stairs or using an elevator. If these services do not appear on your mover's estimate, your mover must deliver your shipment and bill you later for the additional services.

If you agree to pay for the additional services, your mover must execute a written attachment to be made an integral part of the bill of lading and have you sign the written attachment. This may be done through fax

transmissions. You will be billed for the additional services after 30 days from delivery.

(10) If you add additional services after your household goods are in transit, you will be billed for the additional services. To receive delivery, however, you are required to pay no more than 110 percent of the non-binding estimate. Thirty days after delivery, your mover must bill you for any remaining balance. For example, if your non-binding estimate shows total charges at delivery should be \$1,000 but your actual charges at destination are \$1,500, your mover must deliver the shipment upon payment of \$1,100. The mover must bill you for the remaining \$400 after 30 days from delivery.

If your mover furnishes a non-binding estimate, your mover must enter the estimated charges upon the order for service and upon the bill of lading.

Your mover must retain a record of all estimates of charges for each move performed for at least one year from the date your mover made the estimate.

#### **What Payment Arrangements Must My Mover Have in Place To Secure Delivery of My Household Goods Shipment?**

If your total bill is 110 percent or less of the non-binding estimate, the mover can require payment in full upon delivery. If the bill exceeds 110 percent of the non-binding estimate, your mover must relinquish possession of the shipment at the time of delivery upon payment of 110 percent of the estimated amount. Your mover should have specified its acceptable form of payment on the estimate, order for service, and bill of lading. Your mover's failure to relinquish possession of a shipment after you offer to pay 110 percent of the estimated charges constitutes its failure to transport the shipment with "reasonable dispatch" and subjects your mover to your cargo delay claims under 49 CFR part 370.

Your mover must bill for the payment of the balance of any remaining charges after 30 days from delivery.

#### **Subpart E—Pickup of My Shipment of Household Goods**

##### **Must My Mover Write Up an Order for Service?**

We require your mover to prepare an order for service on every shipment transported for you. You are entitled to a copy of the order for service when your mover prepares it.

The order for service is not a contract. Should you cancel or delay your move or if you decide not to use the mover, you should promptly cancel the order.

If you or your mover change any agreed-upon dates for pickup or delivery of your shipment, or agree to any change in the non-binding estimate, your mover may prepare a written change to the order for service. The written change must be attached to the order for service.

The order for service must contain the following 15 elements:

(1) Your mover's name and address and the USDOT number assigned to your mover.

(2) Your name, address and, if available, telephone number(s).

(3) The name, address, and telephone number of the delivering mover's office or agent at or nearest to the destination of your shipment.

(4) A telephone number where you may contact your mover or its designated agent.

(5) One of the following three dates and times:

(i) The agreed-upon pickup date and agreed delivery date of your move.

(ii) The agreed-upon period(s) of the entire move.

(iii) If your mover is transporting the shipment on a guaranteed service basis, the guaranteed dates or periods of time for pickup, transportation, and delivery. Your mover must enter any penalty or per diem requirements upon the agreement under this item.

(6) The names and addresses of any other motor carriers, when known, that will participate in interline transportation of the shipment.

(7) The form of payment your mover will honor at delivery. The payment information must be the same as was entered on the estimate.

(8) The terms and conditions for payment of the total charges, including notice of any minimum charges.

(9) The maximum amount your mover will demand at the time of delivery to obtain possession of the shipment, when transported on a collect-on-delivery basis.

(10) The Surface Transportation Board's required released rates valuation statement, and the charges, if any, for optional valuation coverage. The STB's required released rates may be increased annually by your mover based on the U.S. Department of Commerce's Cost of Living Adjustment.

(11) A complete description of any special or accessorial services ordered and minimum weight or volume charges applicable to the shipment.

(12) Any identification or registration number your mover assigns to the shipment.

(13) For non-binding estimated charges, your mover's reasonably accurate estimate of the amount of the charges, the method of payment of total charges, and the maximum amount (110 percent of the non-binding estimate) your mover will demand at the time of delivery for you to obtain possession of the shipment.

(14) For binding estimated charges, the amount of charges your mover will demand based upon the binding estimate and the terms of payment under the estimate.

(15) An indication of whether you request notification of the charges before delivery. You must provide your mover with the telephone number(s) or address(es) where your mover will transmit such communications.

You and your mover must sign the order for service. Your mover must provide a dated copy of the order for service to you at the time your mover signs the order. Your mover must provide you the opportunity to rescind the order for service without any penalty for a three-day period after you sign the order for service, if you scheduled the shipment to be loaded more than three days after you sign the order.

Your mover should provide you with documents that are as complete as possible,

and with all charges clearly identified. However, as a practical matter, your mover usually cannot give you a complete bill of lading before transporting your goods. This is both because the shipment cannot be weighed until it is in transit and because other charges for service, such as unpacking, storage-in-transit, and various destination charges, cannot be determined until the shipment reaches its destination.

Therefore, your mover can require you to sign a partially complete bill of lading if it contains all relevant information except the actual shipment weight and any other information necessary to determine the final charges for all services provided. Signing the bill of lading allows you to choose the valuation option, request special services, and/or acknowledge the terms and conditions of released valuation.

Your mover also may provide you, strictly for informational purposes, with blank or incomplete documents pertaining to the move.

Before loading your shipment, and upon mutual agreement of both you and your mover, your mover may amend an order for service. Your mover must retain records of an order for service it transported for at least one year from the date your mover wrote the order.

Your mover must inform you, before or at the time of loading, if the mover reasonably expects a special or accessorial service is necessary to transport a shipment safely. Your mover must refuse to accept the shipment when your mover reasonably expects a special or accessorial service is necessary to transport a shipment safely, but you refuse to purchase the special or accessorial service. Your mover must make a written note if you refuse any special or accessorial services that your mover reasonably expects to be necessary.

#### **Must My Mover Write Up an Inventory of the Shipment?**

Yes. Your mover must prepare an inventory of your shipment before or at the time of loading. If your mover's driver fails to prepare an inventory, you should write a detailed inventory of your shipment listing any damage or unusual wear to any items. The purpose is to make a record of the existence and condition of each item.

After completing the inventory, you should sign each page and ask the mover's driver to sign each page. Before you sign it, it is important you make sure that the inventory lists every item in the shipment and that the entries regarding the condition of each item are correct. You have the right to note any disagreement. If an item is missing or damaged when your mover delivers the shipment, your subsequent ability to dispute the items lost or damaged may depend upon your notations.

You should retain a copy of the inventory. Your mover may keep the original if the driver prepared it. If your mover's driver completed an inventory, the mover must attach the complete inventory to the bill of lading as an integral part of the bill of lading.

#### **Must My Mover Write Up a Bill of Lading?**

The bill of lading is the *contract* between you and the mover. The mover is required by

law to prepare a bill of lading for every shipment it transports. *The information on a bill of lading is required to be the same information shown on the order for service.* The driver who loads your shipment must give you a copy of the bill of lading before or at the time of loading your furniture and other household goods.

*It is your responsibility to read the bill of lading before you accept it.* It is your responsibility to understand the bill of lading before you sign it. If you do not agree with something on the bill of lading, do not sign it until you are satisfied it is correct.

The bill of lading requires the mover to provide the service you have requested. You must pay the charges set forth in the bill of lading.

*The bill of lading is an important document. Do not lose or misplace your copy.* Have it available until your shipment is delivered, all charges are paid, and all claims, if any, are settled.

A bill of lading must include the following 14 elements:

(1) Your mover's name and address, or the name and address of the motor carrier issuing the bill of lading.

(2) The names and addresses of any other motor carriers, when known, who will participate in the transportation of the shipment.

(3) The name, address, and telephone number of the office of the motor carrier you must contact in relation to the transportation of the shipment.

(4) The form of payment your mover will honor at delivery. The payment information must be the same that was entered on the estimate and order for service.

(5) When your mover transports your shipment under a collect-on-delivery basis, your name, address, and telephone number where the mover will notify you about the charges.

(6) *For non-guaranteed service*, the agreed-upon date or period of time for pickup of the shipment and the agreed-upon date or period of time for the delivery of the shipment. The agreed-upon dates or periods for pickup and delivery entered upon the bill of lading must conform to the agreed-upon dates or periods of time for pickup and delivery entered upon the order for service or a proper amendment to the order for service.

(7) *For guaranteed service*, the dates for pickup and delivery and any penalty or per diem entitlements due you under the agreement.

(8) The actual date of pickup.

(9) The identification number(s) of the vehicle(s) in which your mover loads your shipment.

(10) The terms and conditions for payment of the total charges including notice of any minimum charges.

(11) The maximum amount your mover will demand from you at the time of delivery for you to obtain possession of your shipment, when your mover transports under a collect-on-delivery basis.

(12) The Surface Transportation Board's required released rates valuation statement, and the charges, if any, for optional valuation coverage. The Board's required released rates may be increased annually by your mover

based on the U.S. Department of Commerce's Cost of Living Adjustment.

(13) Evidence of any insurance coverage sold to or procured for you from an independent insurer, including the amount of the premium for such insurance.

(14) Each attachment to the bill of lading. Each attachment is an integral part of the bill of lading contract. If not provided to you elsewhere by the mover, the following three items must be added as attachments:

(i) The binding or non-binding estimate.

(ii) The order for service.

(iii) The inventory.

A copy of the bill of lading must accompany your shipment at all times while in the possession of your mover or its agent(s). When your mover loads the shipment on a vehicle for transportation, the bill of lading must be in the possession of the driver responsible for the shipment. Your mover must retain bills of lading for shipments it transported for at least one year from the date your mover created the bill of lading.

#### **Should I Reach an Agreement With My Mover About Pickup and Delivery Times?**

You and your mover should reach an agreement for pickup and delivery times. It is your responsibility to determine on what date, or between what dates, you need to have the shipment picked up and on what date, or between what dates, you require delivery. It is your mover's responsibility to tell you if it can provide service on or between those dates, or, if not, on what other dates it can provide the service.

In the process of reaching an agreement with your mover, you may find it necessary to alter your moving and travel plans if no mover can provide service on the specific dates you desire.

Do not agree to have your shipment picked up or delivered "as soon as possible." The dates or periods you and your mover agree upon should be definite.

Once an agreement is reached, your mover must enter those dates upon the order for service and the bill of lading.

Once your goods are loaded, your mover is contractually bound to provide the service described in the bill of lading. Your mover's only defense for not providing the service on the dates called for is the defense of force majeure. This is a legal term. It means that when circumstances change, were not foreseen, and are beyond the control of your mover, preventing your mover from performing the service agreed to in the bill of lading, your mover is not responsible for damages resulting from its nonperformance.

This may occur when you do not inform your mover of the exact delivery requirements. For example, because of restrictions trucks must follow at your new location, the mover may not be able to take its truck down the street of your residence and may need to shuttle the shipment using another type of vehicle.

#### **Must My Mover Determine the Weight of My Shipment?**

Generally, yes. If your mover transports your household goods on a non-binding estimate under the mover's tariffs based upon

weight, your mover must determine the weight of the shipment. If your mover provided a binding estimate and has loaded your shipment without claiming you have added additional items or services, the weight of the shipment will not affect the charges you will pay. If your mover is transporting your shipment based upon the volume of the shipment—that is, a set number of cubic feet (or yards or meters)—the weight of the shipment likewise will not affect the charges you will pay.

Your mover must determine the weight of your shipment before requesting you to pay for any charges dependent upon your shipment's weight.

Most movers have a minimum weight or volume charge for transporting a shipment. Generally, the minimum is the charge for transporting a shipment of at least 3,000 pounds (1,362 kilograms).

If your shipment appears to weigh less than the mover's minimum weight, your mover must advise you on the order for service of the minimum cost before transporting your shipment. Should your mover fail to advise you of the minimum charges and your shipment is less than the minimum weight, your mover must base your final charges upon the actual weight, not upon the minimum weight.

#### **How Must My Mover Determine the Weight of My Shipment?**

Your mover must weigh your shipment upon a certified scale.

The weight of your shipment must be obtained by using one of two methods.

*Origin Weighing*—Your mover may weigh your shipment in the city or area where it loads your shipment. If it elects this option, the driver must weigh the truck before coming to your residence. This is called the *tare weight*. At the time of this first weighing, the truck may already be partially loaded with another shipment(s). This will not affect the weight of your shipment. The truck should also contain the pads, dollies, hand trucks, ramps, and other equipment normally used in the transportation of household goods shipments.

After loading, the driver will weigh the truck again to obtain the loaded weight, called the *gross weight*. The net weight of your shipment is then obtained by subtracting the *tare weight* before loading from the *gross weight*.

Gross Weight – Tare Weight Before Loading = Net Weight.

*Destination Weighing* (Also called *Back Weighing*)—The mover is also permitted to determine the weight of your shipment at the destination after it delivers your load. Weighing your shipment at destination instead of at origin will not affect the accuracy of the shipment weight. *The most important difference is that your mover will not determine the exact charges on your shipment before it is unloaded.*

Destination weighing is done in reverse of origin weighing. After arriving in the city or area where you are moving, the driver will weigh the truck. Your shipment will still be on the truck. Your mover will determine the *gross weight* before coming to your new residence to unload. After unloading your

shipment, the driver will again weigh the truck to obtain the *tare weight*. The net weight of your shipment will then be obtained by subtracting the *tare weight* after delivery from the *gross weight*.

Gross Weight – Tare Weight After Delivery = Net Weight.

At the time of both weighings, your mover's truck must have installed or loaded all pads, dollies, hand trucks, ramps, and other equipment required in the transportation of your shipment. The driver and other persons must be off the vehicle at the time of both weighings. The fuel tanks on the vehicle must be full at the time of each weighing. In lieu of this requirement, your mover must not add fuel between the two weighings when the tare weighing is the first weighing performed.

Your mover may detach the trailer of a tractor-trailer vehicle combination from the tractor and have the trailer weighed separately at each weighing provided the length of the scale platform is adequate to accommodate and support the entire trailer.

Your mover may use an alternative method to weigh your shipment if it weighs 3,000 pounds (1,362 kilograms) or less. The only alternative method allowed is weighing the shipment upon a platform or warehouse certified scale before loading your shipment for transportation or after unloading.

Your mover must use the net weight of shipments transported in large containers, such as ocean or railroad containers. Your mover will calculate the difference between the tare weight of the container (including all pads, blocking and bracing used in the transportation of your shipment) and the gross weight of the container with your shipment loaded in the container.

You have the right, and your mover must inform you of your right, to observe all weighings of your shipment. Your mover must tell you where and when each weighing will occur. Your mover must give you a reasonable opportunity to be present to observe the weighings.

You may waive your right to observe any weighing or reweighing. This does not affect any of your other rights under Federal law.

Your mover may request you waive your right to have a shipment weighed upon a certified scale. Your mover may want to weigh the shipment upon a trailer's on-board, noncertified scale. You should demand your right to have a certified scale used. The use of a noncertified scale may cause you to pay a higher final bill for your move, if the noncertified scale does not accurately weigh your shipment. Remember that certified scales are inspected and approved for accuracy by a government inspection or licensing agency. Noncertified scales are not inspected and approved for accuracy by a government inspection or licensing agency.

Your mover must obtain a separate weight ticket for each weighing. The weigh master must sign each weight ticket. Each weight ticket must contain the following six items:

- (1) The complete name and location of the scale.
- (2) The date of each weighing.
- (3) Identification of the weight entries as being the tare, gross, or net weights.
- (4) The company or mover identification of the vehicle.

(5) Your last name as it appears on the Bill of Lading.

(6) Your mover's shipment registration or Bill of Lading number.

Your mover must retain the original weight ticket or tickets relating to the determination of the weight of your shipment as part of its file on your shipment.

When both weighings are performed on the same scale, one weight ticket may be used to record both weighings.

Your mover must present all freight bills with true copies of all weight tickets. If your mover does not present its freight bill with all weight tickets, your mover is in violation of Federal law.

Before the driver actually begins unloading your shipment weighed at origin and after your mover informs you of the billing weight and total charges, you have the right to demand a reweigh of your shipment. If you believe the weight is not accurate, you have the right to request your mover reweigh your shipment before unloading.

You have the right, and your mover must inform you of your right, to observe all reweighings of your shipment. Your mover must tell you where and when each reweighing will occur. Your mover must give you a reasonable opportunity to be present to observe the reweighings.

You may waive your right to observe any reweighing; however, you must waive that right in writing. You may send the written waiver via fax or e-mail, as well as by overnight courier or certified mail, return receipt requested. This does not affect any of your other rights under Federal law.

Your mover is prohibited from charging you for the reweighing. If the weight of your shipment at the time of the reweigh is different from the weight determined at origin, your mover must recompute the charges based upon the reweigh weight.

Before requesting a reweigh, you may find it to your advantage to estimate the weight of your shipment using the following three-step method:

1. Count the number of items in your shipment. Usually there will be either 30 or 40 items listed on each page of the inventory. For example, if there are 30 items per page and your inventory consists of four complete pages and a fifth page with 15 items listed, the total number of items will be 135. *If an automobile is listed on the inventory, do not include this item in the count of the total items.*

2. Subtract the weight of any automobile included in your shipment from the total weight of the shipment. If the automobile was not weighed separately, its weight can be found on its title or license receipt.

3. Divide the number of items in your shipment into the weight. If the average weight resulting from this exercise ranges between 35 and 45 pounds (16 and 20 kilograms) per article, it is unlikely a reweigh will prove beneficial to you. In fact, it could result in your paying higher charges.

Experience has shown that the average shipment of household goods will weigh about 40 pounds (18 kilograms) per item. If a shipment contains a large number of heavy items, such as cartons of books, boxes of tools or heavier than average furniture, the average

weight per item may be 45 pounds or more (20 kilograms or more).

### What Must My Mover Do if I Want To Know the Actual Weight or Charges for My Shipment Before Delivery?

If you request notification of the actual weight or volume and charges upon your shipment, your mover must comply with your request if it is moving your goods on a collect-on-delivery basis. This requirement is conditioned upon your supplying your mover with an address or telephone number where you will receive the communication. Your mover must make its notification by telephone; fax transmissions; e-mail; overnight courier; certified mail, return receipt requested; or in person.

You must receive the mover's notification at least one full 24-hour day before its scheduled delivery, excluding Saturdays, Sundays, and Federal holidays.

Your mover may disregard this 24-hour notification requirement on shipments subject to one of the following three things:

- (1) Back weigh (when your mover weighs your shipment at its destination).
- (2) Pickup and delivery encompassing two consecutive weekdays, if you agree.
- (3) Maximum payment amounts at time of delivery of 110 percent of the estimated charges, if you agree.

### Subpart F—Transportation of My Shipment

#### Must My Mover Transport the Shipment in a Timely Manner?

Yes, your mover must transport your household goods in a timely manner. This is also known as "reasonable dispatch service." Your mover must provide reasonable dispatch service to you, except for transportation on the basis of guaranteed delivery dates.

When your mover is unable to perform either the pickup or delivery of your shipment on the dates or during the periods of time specified in the order for service, your mover must notify you of the delay, at the mover's expense. As soon as the delay becomes apparent to your mover, it must give you notification it will be unable to provide the service specified in the terms of the order for service. Your mover may notify you of the delay in any of the following ways: by telephone; fax transmissions; e-mail; overnight courier; certified mail, return receipt requested; or in person.

When your mover notifies you of a delay, it also must advise you of the dates or periods of time it may be able to pick up and/or deliver the shipment. Your mover must consider your needs in its advisement.

Your mover must prepare a written record of the date, time, and manner of its notification. Your mover must prepare a written record of its amended date or period for delivery. Your mover must retain these records as a part of its file on your shipment. The retention period is one year from the date of notification. Your mover must furnish a copy of the notification to you either by first class mail or in person, if you request a copy of the notice.

Your mover must tender your shipment for delivery on the agreed-upon delivery date or within the period specified on the bill of lading. Upon your request or concurrence, your mover may deliver your shipment on another day.

The establishment of a delayed pickup or delivery date does not relieve your mover from liability for damages resulting from your mover's failure to provide service as agreed. However, when your mover notifies you of alternate delivery dates, it is your responsibility to be available to accept delivery on the dates specified. If you are not available and are not willing to accept delivery, your mover has the right to place your shipment in storage at your expense or hold the shipment on its truck and assess additional charges.

If after the pickup of your shipment, you request your mover to change the delivery date, most movers will agree to do so provided your request will not result in unreasonable delay to its equipment or interfere with another customer's move. However, your mover is under no obligation to consent to amended delivery dates. Your mover has the right to place your shipment in storage at your expense if you are unwilling or unable to accept delivery on the date agreed to in the bill of lading.

If your mover fails to pick up and deliver your shipment on the date entered on the bill of lading and you have expenses you otherwise would not have had, you may be able to recover those expenses from your mover. This is what is called an inconvenience or delay claim. Should your mover refuse to honor such a claim and you continue to believe you are entitled to be paid damages, you may take your mover to court under 49 U.S.C. 14704. *The Federal Motor Carrier Safety Administration (FMCSA) has no authority to order your mover to pay such claims.*

While we hope your mover delivers your shipment in a timely manner, you should consider the possibility your shipment may be delayed, and find out what payment you can expect if a mover delays service through its own fault, before you agree with the mover to transport your shipment.

#### **What Must My Mover Do if It Is Able To Deliver My Shipment More Than 24 Hours Before I Am Able to Accept Delivery?**

At your mover's discretion, it may place your shipment in storage. This will be under its own account and at its own expense in a warehouse located in proximity to the destination of your shipment. Your mover may do this if you fail to request or concur with an early delivery date, and your mover is able to deliver your shipment more than 24 hours before your specified date or the first day of your specified period.

If your mover exercises this option, your mover must immediately notify you of the name and address of the warehouse where your mover places your shipment. Your mover must make and keep a record of its notification as a part of its shipment records. Your mover has full responsibility for the shipment under the terms and conditions of the bill of lading. Your mover is responsible for the charges for redelivery, handling, and

storage until it makes final delivery. Your mover may limit its responsibility to the agreed-upon delivery date or the first day of the period of delivery as specified in the bill of lading.

#### **What Must My Mover Do for Me When I Store Household Goods in Transit?**

If you request your mover to hold your household goods in storage-in-transit and the storage period is about to expire, your mover must notify you, in writing, about the four following items:

(1) The date when storage-in-transit will convert to permanent storage.

(2) The existence of a nine-month period after the date of conversion to permanent storage, during which you may file claims against your mover for loss or damage occurring to your goods while in transit or during the storage-in-transit period.

(3) Your mover's liability will end.

(4) Your property will be subject to the rules, regulations, and charges of the warehouseman.

Your mover must make this notification at least 10 days before the expiration date of one of the following two periods of time:

(1) The specified period of time when your mover is to hold your goods in storage.

(2) The maximum period of time provided in its tariff for storage-in-transit.

Your mover must notify you by facsimile transmission; overnight courier; e-mail; or certified mail, return receipt requested.

If your mover holds your household goods in storage-in-transit for less than 10 days, your mover must notify you, one day before the storage-in-transit period expires, of the same information specified above.

Your mover must maintain a record of all notifications to you as part of the records of your shipment. Under the applicable tariff provisions regarding storage-in-transit, your mover's failure or refusal to notify you will automatically extend your mover's liability until the end of the day following the date when your mover actually gives you notice.

#### **Subpart G—Delivery of My Shipment**

##### **May My Mover Ask Me To Sign a Delivery Receipt Purporting To Release It From Liability?**

At the time of delivery, your mover will expect you to sign a receipt for your shipment. Normally, you will sign each page of your mover's copy of the inventory.

Your mover's delivery receipt or shipping document must not contain any language purporting to release or discharge it or its agents from liability.

Your mover may include a statement about your receipt of your property in apparent good condition, except as noted on the shipping documents.

*Do not sign* the delivery receipt if it contains any language purporting to release or discharge your mover or its agents from liability. Strike out such language before signing, or refuse delivery if the driver or mover refuses to provide a proper delivery receipt.

##### **What Is the Maximum Collect-on-Delivery Amount My Mover May Demand I Pay at the Time of Delivery?**

On a binding estimate, the maximum amount is the exact estimate of the charges. Your mover must specify on the estimate, order for service, and bill of lading the form of payment acceptable to it (for example, a certified check).

On a non-binding estimate, the maximum amount is 110 percent of the approximate costs. Your mover must specify on the estimate, order for service, and bill of lading the form of payment acceptable to it (for example, cash).

##### **If My Shipment Is Transported on More Than One Vehicle, What Charges May My Mover Collect at Delivery?**

Although all movers try to move each shipment on one truck, it becomes necessary at times to divide a shipment among two or more trucks. This frequently occurs when an automobile is included in the shipment and it is transported on a vehicle specially designed to transport automobiles. When this occurs, your transportation charges are the same as if the entire shipment moved on one truck.

If your shipment is divided for transportation on two or more trucks, the mover may require payment for each portion as it is delivered.

Your mover may delay the collection of all the charges until the entire shipment is delivered, at its discretion, not yours. When you order your move, you should ask the mover about its policies in this regard.

##### **If My Shipment Is Partially Lost or Destroyed, What Charges May My Mover Collect at Delivery?**

Movers customarily make every effort to avoid losing, damaging, or destroying any of your items while your shipment is in their possession for transportation. However, despite the precautions taken, articles are sometimes lost or destroyed during the move.

In addition to any money you may recover from your mover to compensate for lost or destroyed articles, you may also recover the transportation charges represented by the portion of the shipment lost or destroyed. Your mover may only apply this paragraph to the transportation of household goods. Your mover may disregard this paragraph if loss or destruction was due to an act or omission by you. Your mover must require you to pay any specific valuation charge due.

For example, if you pack a hazardous material (*i.e.*, gasoline, aerosol cans, motor oil, etc.) and your shipment is partially lost or destroyed by fire in storage or in the mover's trailer, your mover may require you to pay for the full cost of transportation.

Your mover may first collect its freight charges for the entire shipment, if your mover chooses. At the time your mover disposes of claims for loss, damage, or injury to the articles in your shipment, it must refund the portion of its freight charges corresponding to the portion of the lost or destroyed shipment (including any charges for accessorial or terminal services).

Your mover is forbidden from collecting, or requiring you to pay, any freight charges



(including any charges for accessorial or terminal services) when your household goods shipment is *totally lost or destroyed* in transit, unless the loss or destruction was due to an act or omission by you.

#### **How Must My Mover Calculate the Charges Applicable to the Shipment as Delivered?**

Your mover must multiply the percentage corresponding to the delivered shipment times the total charges applicable to the shipment tendered by you to obtain the total charges it must collect from you.

If your mover's computed charges exceed the charges otherwise applicable to the shipment as delivered, the lesser of those charges must apply. This will apply only to the transportation of your household goods.

Your mover must require you to pay any specific valuation charge due.

Your mover may not refund the freight charges if the loss or destruction was due to an act or omission by you. For example, you fail to disclose to your mover that your shipment contains perishable live plants. Your mover may disregard its loss or destruction of your plants, because you failed to inform your mover you were transporting live plants.

Your mover must determine, at its own expense, the proportion of the shipment, based on actual or constructive weight, not lost or destroyed in transit.

Your rights are in addition to, and not in lieu of, any other rights you may have with respect to your shipment of household goods your mover lost or destroyed, or partially lost or destroyed, in transit. This applies whether or not you have exercised your rights provided above.

#### **Subpart H—Collection of Charges**

##### **Does This Subpart Apply to Most Shipments?**

It applies to all shipments of household goods that involve a balance due freight or expense bill or are shipped on credit.

##### **How Must My Mover Present Its Freight or Expense Bill to Me?**

At the time of payment of transportation charges, your mover must give you a freight bill identifying the service provided and the charge for each service. It is customary for most movers to use a copy of the bill of lading as a freight bill; however, some movers use an entirely separate document for this purpose.

Except in those instances where a shipment is moving on a binding estimate, the freight bill must specifically identify each service performed, the rate or charge per service performed, and the total charges for each service. *If this information is not on the freight bill, do not accept or pay the freight bill.*

Movers' tariffs customarily specify that freight charges must be paid in cash, by certified check, or by cashier's check. When this requirement exists, the mover will not accept personal checks. At the time you order your move, you should ask your mover about the form of payment your mover requires.

Some movers permit payment of freight charges by use of a charge or credit card.

However, do not assume your nationally recognized charge, credit, or debit card will be acceptable for payment. Ask your mover at the time you request an estimate. Your mover must specify the form of payment it will accept at delivery.

If you do not pay the transportation charges at the time of delivery, your mover has the right, under the bill of lading, to refuse to deliver your goods. The mover may place them in storage, at your expense, until the charges are paid. However, the mover must deliver your goods upon payment of 100 percent of a binding estimate.

If, before payment of the transportation charges, you discover an error in the charges, you should attempt to correct the error with the driver, the mover's local agent, or by contacting the mover's main office. If an error is discovered after payment, you should write the mover (the address will be on the freight bill) explaining the error, and request a refund.

Movers customarily check all shipment files and freight bills after a move has been completed to make sure the charges were accurate. If an overcharge is found, you should be notified and a refund made. If an undercharge occurred, you may be billed for the additional charges due.

On "to be prepaid" shipments, your mover must present its freight bill for all transportation charges within 15 days of the date your mover received the shipment. This period excludes Saturdays, Sundays, and Federal holidays.

On "collect" shipments, your mover must present its freight bill for all transportation charges on the date of delivery, or, at its discretion, within 15 days, calculated from the date the shipment was delivered at your destination. This period excludes Saturdays, Sundays, and Federal holidays.

Your mover's freight bills and accompanying written notices must state the following five items:

- (1) Penalties for late payment.
- (2) Credit time limits.
- (3) Service or finance charges.
- (4) Collection expense charges.
- (5) Discount terms.

If your mover extends credit to you, freight bills or a separate written notice accompanying a freight bill or a group of freight bills presented at one time must state, "You may be subject to tariff penalties for failure to timely pay freight charges," or a similar statement. Your mover must state on its freight bills or other notices when it expects payment, and any applicable service charges, collection expense charges, and discount terms.

When your mover lacks sufficient information to compute its tariff charges at the time of billing, your mover must present its freight bill for payment within 15 days following the day when sufficient information becomes available. This period excludes Saturdays, Sundays, and Federal holidays.

Your mover must not extend additional credit to you if you fail to furnish sufficient information to your mover. Your mover must have sufficient information to render a freight bill within a reasonable time after shipment.

When your mover presents freight bills by mail, it must deem the time of mailing to be

the time of presentation of the bills. The term "freight bills," as used in this paragraph, includes both paper documents and billing by use of electronic media such as computer tapes, disks, or the Internet (e-mail).

When you mail acceptable checks or drafts in payment of freight charges, your mover must deem the act of mailing the payment within the credit period to be the proper collection of the tariff charges within the credit period for the purposes of Federal law. In case of a dispute as to the date of mailing, your mover must accept the postmark as the date of mailing.

##### **If I Forced My Mover To Relinquish a Collect-on-Delivery Shipment Before the Payment of ALL Charges, How Must My Mover Collect the Balance?**

On "collect-on-delivery" shipments, your mover must present its freight bill for all transportation charges within 15 days, calculated from the date the shipment was delivered at your destination. This period excludes Saturdays, Sundays, and Federal holidays.

##### **What Actions May My Mover Take To Collect From Me the Charges Upon Its Freight Bill?**

Your mover must present a freight bill within 15 days (excluding Saturdays, Sundays, and Federal holidays) of the date of delivery of a shipment at your destination.

The credit period must be 15 days (including Saturdays, Sundays, and Federal holidays).

Your mover must provide in its tariffs the following three things:

- (1) A provision automatically extending the credit period to a total of 30 calendar days for you if you have not paid its freight bill within the 15-day period.
- (2) A provision indicating you will be assessed a service charge by your mover equal to one percent of the amount of the freight bill, subject to a \$20 minimum charge, for the extension of the credit period. The mover will assess the service charge for each 30-day extension that the charges go unpaid.
- (3) A provision that your mover must deny credit to you if you fail to pay a duly presented freight bill within the 30-day period. Your mover may grant credit to you, at its discretion, when you satisfy your mover's condition that you will pay all future freight bills duly presented. Your mover must ensure all your payments of freight bills are strictly in accordance with Federal rules and regulations for the settlement of its rates and charges.

##### **Do I Have a Right To File a Claim To Recover Money for Property My Mover Lost or Damaged?**

Should your move result in the loss of or damage to any of your property, you have the right to file a claim with your mover to recover money for such loss or damage.

You should file a claim as soon as possible. If you fail to file a claim within 9 months, your mover may not be required to accept your claim. If you institute a court action and win, you may be entitled to attorney's fees, but only in either of two circumstances. You may be entitled to attorney's fees if you submitted your claim to the carrier within



120 days after delivery, and a decision was not rendered through arbitration within the time required by law. You also may be entitled to attorney's fees if you submitted your claim to the carrier within 120 days after delivery, the court enforced an arbitration decision in your favor, and the time for the carrier to comply with the decision has passed.

While the Federal Government maintains regulations governing the processing of loss and damage claims (49 CFR part 370), it cannot resolve those claims. If you cannot settle a claim with the mover, you may file a civil action to recover your claim in court under 49 U.S.C. 14704. You may obtain the name and address of the mover's agent for service of legal process in your state by contacting the Federal Motor Carrier Safety Administration. You may also obtain the name of a process agent via the Internet. Go to <http://www.fmcsa.dot.gov> then click on Licensing and Insurance (L&I) section.

In addition, your mover must participate in an arbitration program. As described earlier

in this pamphlet, an arbitration program gives you the opportunity to settle certain types of unresolved loss or damage claims through a neutral arbitrator. You may find submitting your claim to arbitration under such a program to be a less expensive and more convenient way to seek recovery of your claim. Your mover is required to provide you with information about its arbitration program before you move. If your mover fails to do so, ask the mover for details of its program.

### **Subpart I—Resolving Disputes With My Mover**

#### **What May I Do To Resolve Disputes With My Mover?**

*The Federal Motor Carrier Safety Administration does not help you settle your dispute with your mover.*

Generally, you must resolve your own loss and damage disputes with your mover. You enter a contractual arrangement with your

mover. You are bound by each of the following three things:

(1) The terms and conditions you negotiated before your move.

(2) The terms and conditions you accepted when you signed the bill of lading.

(3) The terms and conditions you accepted when you signed for delivery of your goods.

You have the right to take your mover to court. We require your mover to offer you arbitration to settle your disputes with it.

If your mover holds your goods "hostage"—refuses delivery unless you pay an amount you believe the mover is not entitled to charge—the Federal Motor Carrier Safety Administration does not have the resources to seek a court injunction on your behalf.

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**Warren E. Hoemann,**

*Deputy Administrator.*

[FR Doc. 04-4783 Filed 3-4-04; 8:45 am]

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# Federal Register

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**Friday,  
March 5, 2004**

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## **Part V**

## **The President**

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**Proclamation 7759—American Red Cross  
Month, 2004**



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# Presidential Documents

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Title 3—

Proclamation 7759 of March 3, 2004

The President

American Red Cross Month, 2004

By the President of the United States of America

## A Proclamation

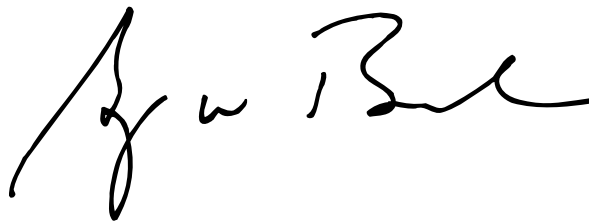
The American Red Cross was founded in 1881 by Clara Barton and chartered by the Congress in 1905 to provide humanitarian services to the United States in times of need. Today, the Red Cross remains dedicated to relieving suffering by helping our citizens prepare for and respond to emergencies and natural disasters.

The Red Cross exemplifies one of the great strengths of America—the compassion of our people. Each year, the Red Cross responds to tens of thousands of disasters in the United States, from home fires and earthquakes to tornadoes and chemical spills. In Afghanistan and Iraq, the Red Cross is serving military families by delivering emergency messages between deployed members of our Armed Forces and their families. Through International Response Teams, the Red Cross provides vital aid overseas to the victims of disease, famine, war, and natural disasters. The Red Cross also educates individuals, families, schools, businesses, and communities about the importance of disaster preparedness, especially after the terrorist attacks of September 11, 2001. By offering health and safety training such as first aid, CPR, and aquatic lifesaving, and by facilitating the collection of millions of units of blood for donation, the Red Cross helps our country to handle emergencies.

Many of the essential services of the American Red Cross are provided by volunteers who give their time and energy to help fellow citizens in need. During Red Cross relief operations, these volunteers assess damages, drive emergency response vehicles to distribute food and other supplies to people, and shelter families who have been evacuated from their homes. As we celebrate American Red Cross Month, I encourage all Americans to commit themselves to helping others by volunteering in their communities.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America and Honorary Chairman of the American Red Cross, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim March 2004 as American Red Cross Month. I urge all Americans to support this organization's humanitarian mission. On behalf of a grateful Nation, we also applaud the selfless dedication of Red Cross employees and volunteers.

IN WITNESS WHEREOF, I have hereunto set my hand this third day of March, in the year of our Lord two thousand four, and of the Independence of the United States of America the two hundred and twenty-eighth.

A handwritten signature in black ink, appearing to read "G. W. Bush". The signature is fluid and cursive, with the first name "G" being particularly large and stylized.

[FR Doc. 04-5225

Filed 3-4-04; 10:34 am]

Billing code 3195-01-P

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